

Chapter 295. OCCUPATIONAL HEALTH

Subchapter C. TEXAS ASBESTOS HEALTH PROTECTION

25 TAC §§295.31, 295.32, 295.34 - 295.56, 295.58- 295.62, 295.64, 295.65, 295.69 - 295.72

The Texas Department of Health (department) proposes amendments to §§295.31-295.32, 295.34-295.56, 295.58-295.62, 295.64-295.65 and 295.69-295.72 concerning Texas asbestos health protection definitions, responsibilities of building owners or operators, licensing, work practices, training and enforcement to update its rules to conform with statutory changes.

Government Code, §2001.039 requires that each state agency review and consider for readopting each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 295.21 and 295.31-295.73 have been reviewed and the department has determined that reasons for adopting the sections continue to exist; however, the rules needed revisions as described in this preamble. Sections 295.21, 295.33, 295.57, 295.63, 295.66-295.68 and 295.73 are not being amended and are opened for comments.

The Notice of Intention to Review was published in the *Texas Register* (25 TexReg 4360) on May 12, 2000. The department received no comments on these sections as a result of the publication of the notice.

During the 76th Legislature, 1999, House Bill 2085 amended the Texas Asbestos Health Protection Act (Act) (Article 4477-3a, Vernon's Texas Civil Statutes) and set forth standard language developed by the Sunset Advisory Commission regarding provisional licenses or registrations; staggered renewal of licenses; license renewal time frames and increased fees for late renewals; the full range of penalties applicable to license holders and abatement workers who hold registrations; and notification of examination results.

During the 77th Legislature, 2001, Senate Bill 509 amended the Act (Article 4477-3a, Vernon's Texas Civil Statutes); House Bill 1279 repealed §15A(c) of the Act (Article 4477-3a, Vernon's Texas Civil Statutes); House Bill 1927 amended Chapter 161 of the Health and Safety Code, and House Bill 2844 amended the Act (Article 4477-3a, Vernon's Texas Civil Statutes).

The purpose of the proposed changes to the rules is to incorporate the requirements imposed by the aforementioned legislative acts and to make the rules easier to understand. These changes establish provisional licenses and registrations, fees for late renewals, and specify the full range of penalties applicable to violations of the rules.

The rules are amended throughout to change the word "inspection" to "survey" to be consistent with Senate Bill 509. Amended §295.31 expands the scope of the general provisions. Amended §295.32 adds new definitions and modifies existing terms. Amended §295.34 clarifies responsibilities of a contractor or other agent of an owner pertaining to a public building and establishes a list of building materials requiring a material safety data sheet (MSDS) under the requirements of House Bill 1927.

Amended §§295.35-295.56 modifies portions of each license category. Amended §295.36 expands the department's ability to enforce the resilient floor covering industry recommended work practices in accordance with House Bill 1279. Amended §295.38 establishes provisional licenses and registrations, and sets the procedures for renewal of licenses and the associated fees. Amended §295.40 eliminates the worker's compensation insurance requirement. Section 295.41 clarifies the state licensing examination requirements regarding the request for information and testing services. Section 295.42 clarifies the asbestos worker registration requirements by eliminating transporting, loading or unloading asbestos. Sections 295.43 and 295.45 simplify the asbestos operations and maintenance contractor requirements by eliminating the certificate of good standing requirement clause. Sections 295.46-295.56 clarify the requirements and conditions of licensure for categories of licenses administered by the program.

Sections 295.58-295.62 amend the general requirements for public buildings operations. By modifying and eliminating some phrases in the rules, owners and operators will have a better understanding of the general requirements. Amended §§295.64-295.65 clarified the training sections and added the option of digital photos for those individuals successfully completing the course. Amended §295.69 modifies the consequences for certain behaviors. Amended §295.70 provides revised examples of violations. Amended §295.71-295.72 changes Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality.

The department's existing rules require a survey for asbestos-containing building materials to be completed for both public and commercial buildings before any renovation or demolition. The compliance rate for obtaining a survey has been low, as contractors claim to be unaware of the requirement, and municipal building permit offices do not always inform the building permit applicant of the asbestos survey requirement. Senate Bill 509 prohibits a municipality that issues a renovation or demolition permit for a public or commercial building from doing so unless the permit applicant provides acceptable evidence that an asbestos survey of the affected parts of the building has been completed by a licensed asbestos inspector, or that an engineer or architect has certified the lack of asbestos in the affected parts of the building.

The department's existing rules exempt persons from licensing and registration requirements for removing resilient floor covering if done consistent with work practices published by the resilient floor covering industry or approved by the Commissioner of Health. Violators of this provision were subject to a civil penalty not to exceed \$5,000, whereas violators of the other provisions of the rules were subject to an administrative penalty not to exceed \$10,000 per violation per day. House Bill 1279 repeals the requirement for civil penalties for violating the exemption provision, which results in administrative penalties consistent with other provisions of the Act. It also clarifies the minimum amount of training that a person must complete to remove resilient floor covering material.

State law requires the abatement of certain asbestos-containing building materials prior to renovation or demolition of a public or commercial building. Prior to the 77th Legislature 2001, no law existed prohibiting the installation or reinstallation of materials that contain asbestos greater than one percent (1%) in new or renovated public buildings. House Bill 1927 amends Chapter 161 of the Health and Safety Code and prohibits a person from installing building materials in a public building without first obtaining a MSDS showing that the materials contain one percent (1%) or less of asbestos or from installing materials that contain more than one percent (1%) asbestos unless there are no alternative materials. The bill also provides for penalties.

The terms asbestos-containing material (ACM) and asbestos-containing building material (ACBM) are defined in §295.32. The primary differences are that ACM is any asbestos containing material and its removal is addressed under NESHAP, whereas ACBM is strictly a building material and is the term used under the Asbestos Hazard Emergency Response Act (AHERA) and the TAHPR. The term ACM is used in conjunction with commercial buildings and facilities as that term is used in the 40 CFR Part 61, Subpart M, titled, "National Emission Standard for Asbestos" concerning those buildings. The term ACBM is used for public buildings only. House Bill 2844 amends the Act to authorize the Texas Board of Health (board) to exempt a demolition or renovation project from the TAHP rules under limited circumstances. An exemption only applies to a project if the United States Environmental Protection Agency exempts the project from federal regulations, or if the board determines that the project will use methods for the abatement or removal of asbestos that provide protection for the public health and safety at least equivalent to the protection required under department rules, and the project does not violate federal law.

Mr. Alan Morris, Director, Toxic Substances Control Division, has determined that for each year of the five years the sections are in effect, there will be fiscal implications for state government as a result of administration or enforcement of the rules as proposed. The proposed increase in licensing fees for late renewals and provisional licenses is estimated to be approximately \$229,000 each year of the first five years for state government. There will be no fiscal implications for units of local government. The increased costs to the state to administer the proposed rules will offset the estimated revenue increases.

Mr. Morris has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased compliance by public building owners

or operators and asbestos licensees with new legislative mandates. The effect on small business will be an increase in revenue of approximately \$250,000 for each business per year due to survey requirements. Micro-business opportunities will increase resulting in an increase in revenue of approximately \$600,000 for each business per year for asbestos inspections for survey requirements. The permit applicant, building owner, or persons who are required to comply with the proposed section would pay all survey costs. There will be no impact on local employment.

Comments on the proposal may be directed to Mr. Alan Morris, Director, Toxic Substances Control Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6600, or 1-800-572-5548. Comments will be accepted for 30 days following publication of this proposal in the Texas Register . In addition, a public hearing on the proposed sections will be held in Austin at the Texas Department of Health, 1100 West 49th Street, G Building, Room K-100, on Friday, December 20, 2002, from 9:00 a.m.- 4:00 p.m. For more information on the hearing, please contact John O. Onyenobi, P.E., Program Administrator, Asbestos Programs Branch at 1-800-572-5548, extension 2453. Information on the hearing can be accessed through our website at www.tdh.state.tx.us/beh/asbestos.

The amendments are proposed under the Texas Civil Statutes, Article 4477-3a, §12(c), which gives the Board of Health (board) the authority to adopt rules specifying performance standards at least as stringent as applicable federal standards; and the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect the Health and Safety Code, Chapter 161; Texas Civil Statutes, Article 4477-3a; and implements Government Code, §2001.039.

§295.31.General Provisions.

(a) (No change.)

(b) Purpose. The purpose of these sections is to establish the means of control and minimization of public exposure to airborne asbestos fibers, a known carcinogen and dangerous health hazard, by regulating asbestos related [disturbance-] activities in public and commercial buildings [that afford public access or occupancy and in commercial buildings-] as defined by these sections .

(c) Scope.

(1) For the purposes of licensure and procedures in public buildings:

(A) Rules application. These sections apply to all buildings which are subject to public occupancy, or to which the general public has access, and to all persons disturbing, removing, encapsulating, or enclosing any amount of asbestos within public buildings for any purpose, including repair, renovation, dismantling, demolition, installation [installations-], or maintenance operations, or any other activity that may involve the disturbance or removal of any amount of asbestos-containing building material (ACBM) [(ACM)-] whether intentional or unintentional. Also included are the qualifications for licensure of persons, and requirements for compliance with these sections and all applicable standards of the United States Environmental Protection Agency and the United States Occupational Safety and Health Administration as adopted.

(B) (No change.)

(2) - (4) (No change.)

(d) - (e) (No change.)

§295.32.Definitions.

The following words and terms, when used with these sections, shall have the following meaning, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Airlock - Mechanism consisting of doors and/or curtains that control air-flow patterns in the doorway such that the air flows only towards the inside of the enclosure to which the decontamination system is attached.

(7) [(6)-] Air monitoring - The collection of airborne samples for analysis of asbestos fibers.

(8) [(7)-] Asbestos - The asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite [~~and all materials containing one percent or more of any of those substances~~].

(9) [(8)-] Asbestos abatement - The removal, the encapsulation or the enclosure of asbestos for the purpose of or, that has the effect of [-] reducing or eliminating airborne concentrations of asbestos fibers or amounts of asbestos-containing building material [~~(ACM)~~].

(10) [(9)-] Asbestos abatement activity - Asbestos abatement or, any on-site preparations or clean-up related to the abatement.

(11) [(10)-] Asbestos abatement contractor - A person who undertakes to perform asbestos removal, enclosure, or encapsulation for others under contract or other agreement [~~, or who bids to undertake asbestos activities~~].

(12) [(11)-] Asbestos abatement supervisor - An individual who is in [~~the~~] direct charge of and responsible [~~charge of~~] for the personnel, practices, and procedures of an asbestos abatement activity [~~operation~~] or project.

(13) [(12)-] Asbestos consulting activities - Consulting activities in public buildings include: the designing of asbestos abatement projects; the survey [~~inspection~~] for asbestos-containing building materials [~~(ACM)~~]; the evaluation and selection of appropriate asbestos abatement methods and project layout; the preparation of plans, specifications and contract documents; the review of environmental controls[-] and abatement procedures for personal protection which are employed every day of the project, from the start through the completion dates of the project [~~during the project~~]; the design of [~~area and clearance~~] air monitoring of the project; any survey [~~inspection~~], management planning, air monitoring, or project management performed by or for the consultant or consulting agency; consultation regarding compliance with various regulations and standards; recommending abatement options; and representing the consultant agency or consultant in obtaining consulting work.

(14) [(13)-] Asbestos-containing building material (ACBM) - Surfacing asbestos-containing material [~~ACM~~], thermal system insulation asbestos-containing material [~~ACM~~], or miscellaneous asbestos-containing material [~~ACM~~] that is found in or on interior structural members or other parts of a public or commercial building.

(15) [(14)-] Asbestos-containing material (ACM) - Materials or products , including any single material component of a structure or any layer of a material sample, that contain more than 1.0% of any kind or combination of asbestos, as determined by the Environmental Protection Agency [~~(EPA)~~] recommended methods as listed in EPA/600/R-93/116, July 1993 , "Method for the Determination of Asbestos in Bulk Building Materials". [~~This means any one material component of a structure or any layer of a material sample. Composite sample analysis is not allowed.~~]

(16) [(15)-] Asbestos-containing waste material - Includes mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of 40 CFR Part 61, Subpart M. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing materials, and materials contaminated with asbestos including disposable equipment and clothing.

(17) ~~[(16)]~~ Asbestos exposure - Airborne asbestos fiber concentrations resulting from disturbance or deterioration of asbestos or asbestos-containing ~~[asbestos-containing-]~~ building material ~~[(ACM)]~~.

(18) ~~[(17)]~~ Asbestos project design - Asbestos abatement project design includes the inspection of public buildings for asbestos-containing ~~[asbestos-containing-]~~ building material ~~[(ACM)]~~, the evaluation and selection of appropriate asbestos abatement methods, project layout, the preparation of plans, specifications and contract documents, and the review of environmental controls, abatement procedures and personal protection equipment employed every day of the project, from the start through the completion dates of the project ~~[during the project]~~.

(19) ~~[(18)]~~ Asbestos-related activity - The disturbance (whether intentional or unintentional), removal, encapsulation, or enclosure of asbestos, including preparations or final clearance, the performance of asbestos surveys, the development of management plans and response actions, asbestos project design, the collection or analysis of asbestos samples, monitoring for airborne asbestos, ~~[bidding for a contract for any of these activities]~~ preparation of plans and specifications, or any other activity required to be licensed under the Texas Asbestos Health Protection Act.

(20) ~~[(19)]~~ Asbestos removal - Any action that dislodges, strips, or otherwise takes away asbestos-containing ~~asbestos-containing-~~ building material ~~[(ACM)]~~.

(21) ~~[(20)]~~ Asbestos reporting unit (ARU) - An asbestos reporting unit is 160 square feet or 260 linear feet or 35 cubic feet of asbestos-containing building material ~~[ACBM-]~~ in public buildings or regulated asbestos-containing material ~~[RACM-]~~ in facilities, as defined under National Emissions Standards for Hazardous Air Pollutants ~~[NESHAP-]~~.

~~[(21) Asbestos survey—An inspection of a building or facility to determine the location, quantity, and condition of asbestos-containing material (ACM) therein by taking samples for analysis or by visual inspection.]~~

(22) (No change.)

(23) Building owner - The owner of record of any public building ~~. [or any person, such as a property manager, who exercises control over such building to the extent that said person contracts for or permits renovation to or demolition of said building. A general contractor hired by the building owner for the purpose of performing a renovation or demolition cannot act as the building owner.]~~ A building owner may hire a contractor or other agent such as an architect, engineer, or property manager who may assume certain tasks as outlined in §295.34(b)(5)-(6) of this title (relating to Asbestos Management in Facilities and Public Buildings). (See also the definition of facility owner.)

(24) Category I nonfriable asbestos-containing material (ACM) - Asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using Polarized Light Microscopy.

(25) Category II nonfriable asbestos-containing material (ACM) - Any material, excluding Category I nonfriable asbestos-containing material, containing more than 1.0% asbestos as determined using Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(26) ~~[(24)]~~ CFR - The Code of Federal Regulations.

(27) ~~[(25)]~~ Commissioner - The Texas Commissioner of Health.

(28) ~~[(26)]~~ Commercial asbestos - Any material containing asbestos that is extracted from ore and has value because of its asbestos content (National Emissions Standards for Hazardous Air Pollutant ~~[NESHAP-]~~ definition, 1990).

(29) [~~(27)~~] Commercial Building - The interior space of any industrial ~~, [or federal government-owned]~~ federal-government-owned building , or residential structure installation or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units) . [Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.]

(30) [~~(28)~~] Competent person - The individual designated as the competent person [~~as required~~] by the United States Occupational Safety and Health Administration regulations in 29 CFR [,] 1926.58. For a National Emissions Standards for Hazardous Air Pollutant project, a person with an Environmental Protection Agency contractor/supervisor accreditation.

(31) [~~(29)~~] Containment - A portion of the regulated area that has been sealed and placed under negative air pressure with [~~high efficiency~~] high-efficiency particulate air filter [~~air filter (HEPA)~~] filtered negative air machines.

(32) [~~(30)~~] Contractor - A person who constructs, repairs, or maintains a public building as an independent contractor, or is under contract to perform a service with wage or income reporting and tax responsibility to the state or federal government. The term includes a subcontractor .

(33) [~~(31)~~] Demolition - The wrecking or removal of any load-supporting structural member of a public building or facility or [~~any related asbestos removal, stripping, or handling operations together with any related operations or~~] the intentional burning of any public building or facility.

(34) [~~(32)~~] Department - The Texas Department of Health.

(35) [~~(33)~~] Designated person - The individual designated under the Asbestos Hazard Emergency Response Act [~~(AHERA)~~] 40 CFR Part 763 Subpart E to oversee all asbestos activities [~~to include~~] including compliance with all laws, regulations, and rules.

(36) [~~(34)~~] Employee - A person who is paid a salary, wage, or remuneration by an entity for services performed and has a relationship with the entity that would result in the entity being liable for that person's acts or judgments.

(37) [~~(35)~~] Encapsulation - A method of control of asbestos fibers in which the surface of asbestos-containing [~~asbestos-containing~~] material [~~(ACM)~~] is penetrated by or covered with a liquid coating prepared for that purpose.

(38) [~~(36)~~] Enclosure - The construction of an airtight, impermeable, semi-permanent barrier surrounding asbestos to prevent the release of asbestos fibers into the air.

(39) [~~(37)~~] Environmental Protection Agency [~~(EPA)~~] regulations - Regulations found in 40 Code of Federal Regulations [~~(CFR)~~] at 40 CFR Parts 61-62 and Parts 700-789 .

(40) [~~(38)~~] EPA - The United States Environmental Protection Agency.

(41) [~~(39)~~] Facility - Any institutional, commercial, public, industrial or residential structure installation or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive disposal site. Any structure, installation or building that was previously subject to 40 CFR Part [§-]61 [~~441~~], Subpart M is not excluded, regardless of its current use or function.

(42) [~~(40)~~] Facility owner - The owner of record of any facility [~~or public building~~] or any person who exercises control over a facility [~~or public building~~] to the extent that said person contracts for or permits renovation to or demolition of said facility [~~or public building~~]. (See also the definition of building owner.)

(43) [~~(41)~~] Federal-government [~~Federal government~~] owned building - Any building, which is not a school building as defined by 40 CFR 763.83, owned by the United States Federal Government [~~or any other type of U.S. military building~~].

(44) [~~(42)~~] Friable material - Materials that when dry can be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that, when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure.

(45) [~~(43)~~] HEPA - A high-efficiency particulate air filter, capable of trapping and retaining 99.97% of mono-dispersed airborne particles 0.3 micron or larger in diameter.

(46) [~~(44)~~] HVAC - Heating, ventilation, and air conditioning systems.

(47) [~~(45)~~] Independent third-party air monitor - A person retained to collect area air samples to be analyzed [~~by and~~] for the owner of the building or facility being abated. The person must not be employed by the abatement contractor to analyze any area samples collected during the abatement projects being monitored or the clearance samples subject to the provisions of §295.37 of this title (relating to Licensing and Registration: Conflicts of Interests).

(48) [~~(46)~~] Individual - A [~~single~~] person acting on his or her own behalf [~~of and for his or herself~~].

(49) [~~(47)~~] Industrial building - Any building where industrial or manufacturing operations or processes are conducted and to which access is limited principally to employees and contractors of the facility operator or to invited guests under controlled conditions.

(50) [~~(48)~~] Inspection - An activity undertaken in a school building, public building, or commercial building to determine the quantity, presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material [~~(ACBM)~~] or suspected asbestos-containing building material [~~ACBM~~], whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed asbestos-containing building material [~~ACBM~~] which has been previously identified. The term does not include the following:

(A) periodic surveillance of the type described in 40 CFR §763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing building material [~~ACBM~~];

(B) inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(C) visual inspections of the type described in 40 CFR §763.90(i) solely for the purpose of determining completion of response actions.

(51) [~~(49)~~] Installation - A building or structure, or group of buildings or structures, at a single demolition or renovation site controlled by the same owner or operator (National Emissions Standards for Hazardous Air Pollutant [NESHAP] definition, 1990).

(52) [~~(50)~~] Layer - Any constituent of an asbestos bulk sample that exhibits different physical properties such as color or composition and can be [~~by~~] readily separated from the rest of the sample with an instrument such as a modeler's knife.

(53) [~~(51)~~] License - Any license or registration , or any provisional license or registration, issued under this chapter.

(54) [~~(52)~~] Licensee - A person who meets all qualifications and has been issued a license or registration by the Texas Department of Health in accordance with these sections.

(55) [~~(53)~~] Local Education Agency (LEA) - means:

(A) a [~~A~~] public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools ; [~~–~~]

(B) the [~~The~~] term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school ; [~~–~~]

(C) the [~~The~~] term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs ; and [~~–~~]

(D) the [~~The~~] owner or governing authority of any nonpublic, nonprofit elementary, or secondary school building.

(56) [~~(54)~~] Major Fiber Release Episode - Any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of more than 3 square or linear feet of friable asbestos-containing building material [~~ACBM~~].

(57) [~~(55)~~] Management plan - A written plan describing appropriate actions for surveillance and management of asbestos-containing [~~asbestos-containing~~] material [~~(ACM)~~].

(58) [~~(56)~~] Minor Fiber Release Episode - Any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of 3 square or linear feet or less of friable asbestos-containing building material [~~ACBM~~].

(59) [~~(57)~~] Model accreditation plan - A United States Environmental Protection Agency plan which provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity, as described in Title 40, CFR, Part 763, Subpart E, Appendix C.

(60) Municipality - A general-law, home-rule or special-law municipality as defined in the Texas Local Government Code §1.005. A legally created body politic providing local government functions in a community.

(61) [~~(58)~~] NESHAP - The United States Environmental Protection Agency National Emissions Standards for Hazardous Air Pollutants, as described in Title 40 [~~–~~] CFR, Part 61.

(62) [~~(59)~~] NIOSH - The National Institute for [~~of~~] Occupational Safety and Health.

(63) [~~(60)~~] Nonfriable material - Material which, when dry, cannot [~~may not~~] be crumbled, pulverized, or reduced to powder by hand pressure.

(64) [~~(61)~~] NVLAP - The National Voluntary Laboratory Accreditation Program.

(65) [~~(62)~~] Operations and maintenance (O&M) - Operations and maintenance activities are repairs, maintenance, renovation, installation, replacement, or cleanup of building materials or equipment.

(66) [~~(63)~~] Operations and maintenance (O&M) contractor - A person who holds an Asbestos Operations & Maintenance Contractor (Restricted) license for general asbestos Operations and maintenance [~~O&M~~] work in

a public building ~~[for himself or herself]~~, as a building owner or agent, or as a contractor, if working for others, and who is required to follow ~~[follows]~~ the guidance contained in the Environmental Protection Agency [EPA] "Green Book _" ~~[-]~~ A contractor working for others must have the specified insurance for an abatement contractor.

(67) ~~(64)~~ Operations and maintenance (O&M) manual - A record of operations and maintenance ~~[O&M]~~ activities in a public building. The public building owner shall record each individual operations and maintenance ~~[O&M]~~ activity in the manual, including the date of activity, the persons performing the activity, complete description of the activity, including methods used to prevent the emission of asbestos fibers, and the amount of asbestos removed. An updated total of the amount of asbestos abated shall be kept as a comparison to the amount estimated in the annual consolidated ~~[O&M]~~ notification. The manual will be made available to the department upon request.

(68) ~~(65)~~ OSHA - The Occupational Safety and Health Administration of the United States Department of Labor.

(69) ~~(66)~~ OSHA Regulations - Regulations found in 29 Code of Federal Regulations , particularly 29 CFR §1926.1101, which governs asbestos in construction .

(70) ~~(67)~~ Owner or operator of a demolition or renovation activity - Any person who owns, leases, operates, controls, or supervises a commercial building or ~~[the]~~ facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation or both.

(71) ~~(68)~~ PAT - Proficiency Analytical Testing.

(72) ~~(69)~~ PCM - Phase-contrast microscopy, a method of analysis for overall airborne fiber counts using an optical microscope.

(73) ~~(70)~~ PEL - Permissible Exposure Limit as defined by Occupational Safety and Health Administration [OSHA] regulations (29 CFR §1926.1101).

(74) ~~(73)~~ Person - A person is:

(A) an individual;

(B) an organization such as a corporation, partnership, sole proprietorship, governmental subdivision, or agency; or

(C) any other legal entity recognized by law as having ~~[the subject of]~~ rights and duties.

(75) ~~(74)~~ Plans and specifications - Site-specific asbestos abatement description which includes drawings, floor plans or equivalent of sufficient size and detail, that display the location of asbestos abatement activities, the location of regulated area(s), and a clear and understandable written description of the work to be performed.

(76) ~~(72)~~ PLM - Polarized-light microscopy, a method of analysis for detection of the presence and type of asbestos.

(77) Preparation-preparation for asbestos abatement activity which includes, but not limited to, the following activities:

(A) pre-cleaning; sweeping; wet wiping; high-efficiency particulate air filter vacuuming; sealing penetrations and openings; installing polyethylene; installing isolation barriers (critical barriers, dividing walls, etc.); installing any part of a decontamination enclosure system or any part of the water line connections to the

showers, drains, and/or filtration; set-up or use of any load-out/bag-out systems, selection, installation, or maintenance of respiratory systems or fiber reduction systems such as misting, spraying, etc., positioning of warning signs; or

(B) installation of engineering controls (local exhaust ventilation equipped with HEPA filter dust collection systems, construction of enclosures or isolation mechanisms to control processes producing asbestos dust, ventilation of the regulated area to move contaminated air away from the breathing zone of employees and toward a filtration or collection device equipped with a high-efficiency particulate air filter); installation of scaffolding (in an area in which asbestos maybe disturbed during the installation); installation, set-up, and calibration of monitoring devices (including sampling systems and manometers); or

(C) removal of any item from a space within a public building, once an asbestos abatement contractor takes control of that space for the purpose of asbestos abatement. Control occurs when the area has been established by the asbestos abatement contractor as a regulated area.

(78) [(74)-] Public building - The interior space of a building used or to be used for purposes that provide for public access or occupancy, including schools, hospitals, prisons and similar buildings. [Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.-] The term includes any building during a period of vacancy, including the period during preparations prior to actual demolition. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation (civilian or military);

(C) a private residence;

(D) an apartment building with no more than four dwelling units; [~~or~~]

(E) a manufacturing facility or building that is limited to workers and invited guests under controlled conditions ;[~~or~~]

(F) a building, facility, or any portion of which , prior to demolition, has been determined to be structurally unsound and in danger of imminent collapse by a professional engineer, registered architect, or a city, county, or state government official ; or [~~or~~]

(G) the portion of a building which has become structurally unsound due to demolition.

(79) [(75)-] Public school - Any elementary or secondary school operated by publicly elected or appointed school officials in which the program and activities are under the control of these officials and which is supported primarily by public funds.

(80) RACM - Regulated asbestos-containing material as defined in 40 CFR Part 61 Subpart M.

(81) [(76)-] Regulated area - The demarcated area in which asbestos abatement activity takes place, and in which the possibility of exceeding the permissible exposure limits [(PEL)-] for the concentrations of airborne asbestos exists.

(82) [(77)-] Renovation - Additions to or alterations of a [~~the~~] building [~~for purposes of restoration~~] by removal, repairing, and rebuilding.

(83) [~~(78)~~] Response action - A method, including removal, encapsulation, enclosure, repair, [~~and~~] operation and maintenance, that protects human health and the environment from friable asbestos-containing building material [~~ACBM~~].

(84) [~~(79)~~] Responsible person - The individual that is designated by the licensed asbestos abatement contractor, asbestos operations and maintenance contractor, asbestos laboratory, asbestos consultant agency, or asbestos management planner agency [~~Asbestos Abatement Contractor, Asbestos Operations and Maintenance Contractor, Asbestos Laboratory, Asbestos Consultant Agency, or Asbestos Management Planner Agency~~], as responsible for their operations and compliance with these rules.

(85) [~~(80)~~] School - Any public or private, non-profit, elementary or secondary (kindergarten through grade 12) school as defined in the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(86) [~~(81)~~] School building - Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food. Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education. Any other facility used for the instruction or housing of students or for the administration of educational or research programs. Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building." Any portico or covered exterior hallway or walkway. Any exterior portion of a mechanical system used to condition interior space.

(87) [~~(82)~~] Small-scale, short-duration activities (SSSD) - Tasks [~~Are tasks~~] such as, but not limited to removal of asbestos-containing insulation on pipes; removal of small quantities of asbestos-containing insulation on beams or above ceilings; replacement of an asbestos-containing gasket on a valve; installation or removal of a small section of drywall; or installation of electrical conduits through or proximate to asbestos-containing materials. These tasks [~~,when performed~~] in a commercial building [~~,~~] do not require accreditation. Small-scale, short-duration activities [~~SSSD~~] can be further defined as [~~by~~] the following [~~considerations~~].

(A) Removal of small quantities of asbestos-containing material [~~ACM~~] only if required in the performance of another maintenance activity not intended as asbestos abatement.

(B) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag.

(C) Minor repairs to damaged thermal system insulation which do not require removal.

(D) Repairs to a piece of asbestos-containing wallboard.

(E) Repairs, involving encapsulation, enclosure, or removal, to small amounts of friable asbestos-containing building material [~~ACBM~~] only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work areas, in order to perform its intended containment function.

(88) [~~(83)~~] Start date - The dates defined as:

(A) asbestos abatement start date - For the purpose of notification to the department in accordance with §295.61 of this title (relating to Operations: Notifications), the [~~The~~] date on which the actual disturbance of asbestos begins . Preparation that does not disturb asbestos is not the asbestos abatement start date ;

(B) demolition/renovation start date - The date on which the demolition or renovation process begins.

(89) [~~(84)~~] Stop date - The dates defined as:

(A) asbestos abatement stop date (completion date) - For the purpose of notification to the department in accordance with §295.61 of this title (relating to Operations: Notifications), the [The-] date on [upon-] which air monitoring clearance of asbestos abatement is [has been-] achieved. For removal of the resilient floor covering material in accordance with §295.36 of this title (relating to Licensing and Registration: Emergency), the date that all asbestos-containing building materials are removed from the substrate and properly containerized. For National Emissions Standards for Hazardous Air Pollutant projects, the date that all regulated asbestos-containing building material is removed from the substrate and properly containerized. [Where air clearance is not required, such as roofing removal, the date upon which the removal of asbestos-containing material is completed.-]

(B) demolition/renovation stop date - For demolition, the last date on which the wrecking and/or removal operations of load-bearing structural components are completed. For renovation, the last date that interior surfaces are altered or final clearance is obtained. [The date on which the demolition or renovation is complete.-]

(90) [(85)-] Survey - An activity undertaken in a school building [-] or a public and commercial building to determine the quantity, presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material [(ACBM)-] or suspected asbestos-containing building material [(ACBM)-], whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed asbestos-containing building material [(ACBM)-] which has been previously identified. The term does not include the following:

(A) periodic surveillance of the type described in 40 CFR §763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing building material [(ACBM)-];

(B) inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(C) visual inspections of the type described in 40 CFR §763.90(i) solely for the purpose of determining completion of response actions.

(91) [(86)-] TEM - Transmission electron microscopy [Electron Microscopy-]. A method of analysis for the detection of the presence and type of asbestos.

(92) [(87)-] Transportation of asbestos-containing [asbestos-containing-] material (ACM) - Moving asbestos materials from one site to another or from one site to a storage facility or disposal site, but not within the same site .

(93) [(88)-] Working days - Monday through Friday including holidays which fall on those days.

§295.34. Asbestos Management in Facilities and Public Buildings.

(a) General. [~~Those whose jobs relate to the physical aspects of a building including carpenters, electricians, plumbers, telephone and maintenance personnel, and those who occupy such buildings, are at great risk of asbestos-related disease unless proper training, personal protection, and/or engineering controls are rigorously employed. Prudent management of asbestos in buildings is vitally necessary for their protection.-] Building owners are required to inform all persons in writing, or document oral [personal-] communication between the owner [-] (or their authorized representative) [-] and those [the persons,-] who [are to-] perform any type of maintenance, custodial, renovation, or demolition work of the presence and location of asbestos-containing building materials (ACBM) prior to the start of any asbestos-related activity . [Before performing any demolition or renovation activity facility owners are required to abate all friable ACBM or asbestos containing materials which may become RACM in accordance with 40 CFR Part 61, Subpart M. Before performing any demolition or renovation activity public building owners are required to abate friable and non friable ACBM in accordance with 40 CFR Part 61, Subpart M and these sections.-]~~

(1) Demolition and/or renovation of a facility or commercial building. Before performing any demolition or renovation activity in a facility or commercial building, building owners or operators shall ensure that all friable asbestos-containing material (ACM) or asbestos-containing materials which may become friable (i.e. Category II nonfriable ACM) are inspected and abated in accordance with 40 CFR Part 61, Subpart M.

(2) Demolition and/or renovation of a public building. Before performing any demolition in a public building, building owners shall ensure that all friable asbestos-containing material (ACM) or ACM which may become friable (i.e. Category II nonfriable ACM) are surveyed and abated in accordance with 40 CFR Part 61, Subpart M. The asbestos survey and abatement for the demolition shall be conducted by persons licensed in accordance with these rules, and according to the standards for removal specified in §§295.58 - 295.60 of this title. Before performing any renovation in a public building, building owners are required to survey and abate all asbestos-containing building material (ACBM) that could foreseeably be disturbed in the area to be renovated in accordance with these rules.

(b) Statement of responsibility. The building owner retains the primary responsibility for compliance with these rules for the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos encountered in the construction, operations, maintenance, or furnishing of that building or facility, including:

(1) - (2) (No change.)

(3) the responsibility for periods when the building or facility is under management by others; [~~and~~]

(4) the responsibility to ensure licensees to have in effect workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance, if workers' compensation insurance is required by the specifications or owner; and [the responsibility for assuring that his/her contracts with licensees provide for workers compensation insurance as required under §295.39(e)(4) of this title (relating to Licensing and Registration: Out of State Applicants) and the licensing sections of these rules.]

(5) the responsibility to hire a contractor at the building owner's discretion to oversee certain tasks. The building owner retains responsibility for compliance with these rules and any violations that may occur. The building owner may delegate the following duties to a contractor:

(A) preparing bid documents, which do not include plans and specifications as defined in §295.32(75) of this title (relating to Definitions.);

(B) entering into contracts for asbestos-related activities with qualified licensees;

(C) overseeing work performance of licensee; and

(D) paying for asbestos related activities on behalf of the owner.

(6) the responsibility to hire an agent other than a contractor in accordance with the responsibility provisions of paragraph (5) of this subsection subject to the conflict of interest limitations of §295.37 of this title (relating to Licensing and Registration: Conflicts of Interests).

(c) Conditions requiring a mandatory asbestos survey [~~inspection~~] for ACBM. Prior to any renovation or dismantling within a public building, commercial building, or facility , including preparations for partial or complete demolition, as required by 40 CFR, §61.145, owners must have a thorough survey [~~inspection~~] performed. The work area and all immediately surrounding areas which could foreseeably be disturbed by the actions necessary to perform the project must be inspected and sampled as applicable prior to renovations or demolition. A copy of the survey [~~inspection~~] report must be produced upon request by the Texas Department of Health (department). [~~Once an inspection is complete, care must be taken to ascertain the contents of any new products installed in the building that would void the accuracy and validity of the survey.~~] If a survey [~~an~~

~~inspection~~] cannot be performed before demolition or renovation is started due to the building being structurally unsound and unsafe to enter, all material must be presumed to contain asbestos and must be treated as ACBM.

(1) In a public building the inspection must be performed by a person appropriately licensed in accordance with these rules [~~licensed asbestos inspector~~]. Criteria to rebut the presence of ACBM in a public building shall be based upon surveys [~~inspections~~] which conform to generally accepted industry standards such as the [~~sampling~~] protocol specified in [~~40 CFR Part 763 Subpart E,~~] §763.85, commonly referred to as the "AHERA" rules , which are the required method for schools. Other factors should be taken into consideration when deciding on the best method to determine the location, extent and condition of the ACBM in a non-school building. Multi-story buildings may require investigation of the systems in the building in order to identify all possible [~~possibilities of~~] ACBM [~~occurrence~~]. Under no circumstances will less than three samples for each homogeneous area be collected. During the construction of a [~~new~~] public building, a licensed inspector, or project architect or engineer, may compile the information from material safety data sheets (MSDS) of all products used in the construction of the building and, finding no asbestos in any of those products, prepare [~~make~~] a signed written certification [~~statement~~] that he has reviewed the MSDSs for all projects used in the construction and that none of those products contain ACBM and; therefore, the building materials do not contain asbestos [~~no ACBM was used during the construction~~]. This certification [~~statement~~], together with copies of the MSDSs and copies of any previous asbestos surveys , may [~~can~~] be used as an asbestos survey [~~inspection~~].

(2) In a commercial building the inspection must be performed by an accredited inspector. This person is not required to be licensed but must have the applicable Model Accreditation Plan training.

(3) (No change.)

(4) Asbestos surveys remain acceptable if the asbestos survey was done in compliance with the Texas Asbestos Health Protection Rules (TAHPR) in effect at the time the asbestos survey was completed, and if the asbestos survey continues to represent accurately the asbestos conditions in the building in which a demolition or renovation project occurs.

(d) - (g) (No change.)

(h) Requirement for survey [~~inspection~~] and management plan. If, in the opinion of the department following a site inspection of a public building, there appears to be a danger or potential danger from asbestos-containing building [~~asbestos~~] materials in poor condition to the workers or occupants of the [~~a~~] building [~~, workers in a building,~~] or the general public, the department shall , by written request, require the building owner or authorized representative to complete an immediate survey and asbestos management plan [~~for asbestos~~] by a licensed asbestos inspector and licensed management planner and [~~to~~] send a copy of the management plan for review and approval to the department within 90 days of receipt of the written request [~~order~~]. Copies of the plan shall be on file with the owner or management agency, and in the possession of the supervisor in charge of building operations and maintenance.

(i) A person may not install building materials or replacement parts as stated in subsection (j) of this section, in a public building unless:

(1) the person obtains a required MSDS showing that the materials or replacement parts contain 1.0% or less of asbestos; or

(2) the materials or replacement parts, according to the MSDS, contain more than 1.0% asbestos but there is no alternative material or part as demonstrated by the building owner or contractor.

(j) A MSDS shall be obtained for the following building materials or replacement parts:

(1) surfacing materials:

(A) acoustical plaster;

(B) decorative plaster/stucco;

(C) textured paint/coating;

(D) spray applied insulation;

(E) blown-in insulation;

(F) fireproofing insulation;

(G) joint compound; and

(H) spackling compounds.

(2) thermal system insulation:

(A) taping compounds (thermal);

(B) HVAC duct insulation;

(C) boiler insulation;

(D) breaching insulation;

(E) pipe insulation; and

(F) thermal paper products.

(3) miscellaneous material:

(A) cement pipes;

(B) cement wallboard/siding;

(C) asphalt/vinyl floor tile;

(D) vinyl sheet flooring/vinyl wall coverings;

(E) floor backing;

(F) construction mastic;

(G) ceiling tiles/lay-in ceiling panels;

(H) packing materials;

(I) high temperature gaskets;

(J) laboratory hoods/table tops;

(K) fire blankets/curtains;

(L) elevator equipment panels;

(M) elevator brake shoes;

(N) ductwork flexible fabric connections;

(O) cooling tower;

(P) heating and electrical ducts;

(Q) electrical panel partitions;

(R) electrical cloth/electrical wiring insulation;

(S) chalkboards;

(T) roofing shingles/tiles;

(U) roofing felt;

(V) base flashing;

(W) fire doors;

(X) caulking/putties;

(Y) adhesives/mastics; and

(Z) wallboard.

(k) The department may exempt a demolition or renovation project from the TAHPA/NESHAP rules relating to demolition and renovation activities if:

(1) the project has received an exemption from the United States Environmental Protection Agency exempting the project from federal regulations; or

(2) the board determines that:

(A) the project will use methods for the abatement or removal of asbestos that provide protection for the public health and safety at least equivalent to the protection provided by the procedures required under board rule for the abatement or removal of asbestos; and

(B) the project does not violate federal law.

§295.35.Licensing and Registration: Conditions.

(a) - (h) (No change.)

(i) Examination. Each applicant for an individual license must take and pass an accreditation examination in accordance with §295.41 of this title (relating to Licensure :[÷] State Licensing Examination) administered by the department in the category for which an individual wishes to be licensed. For further information regarding the testing requirements, refer to §295.41 of this title.

(j) (No change.)

§295.36.Licensing and Registration: Exemptions; Emergency.

(a) Exemption. Those who remove resilient floor covering materials in public buildings are exempt from the licensing and registration requirements of these sections, provided that:

(1) the condition of tiles [floor-] and their adhesives [adhesive-] (mastic) is examined [are analyzed for asbestos content-] prior to removal to determine if the Resilient Floor Covering Institute (RFCI) methods will work without creating Regulated Asbestos Containing Material (RACM). If the tile to be removed has lost its integrity as indicated by peeling, cracking, or crumbling of the binding material, the RFCI work practices are inappropriate, and the removal project shall not be performed under this exemption ;

(2) if the tiles and/or adhesives have been sanded, ground, mechanically chipped, drilled, abraded or cut prior to the start of the project, then an appropriately licensed person must be used for the abatement;

(3) if, upon initiating the RFCI work practices, the flooring becomes friable, is made into RACM, does not remain intact, or is sanded, ground, mechanically chipped, drilled, abraded or cut (includes sawing but does not include shearing, slicing or punching), the RFCI work practice must immediately be stopped by the contractor, and the building owner shall use appropriately licensed persons for the subsequent portions of the project where the tiles cannot be removed intact using the RFCI work practice. Failure to stop the project under these circumstances is a violation of this section and §295.34(a) of this title (related to Asbestos Management in Facilities and Public Buildings), and subjects the contractor and the building owner to penalties in accordance §295.70 of this title (relating to Compliance: Administrative Penalty);

(4) [(2)-] all those engaged in removal of resilient floor coverings shall have received training in an eight-hour course which covers the elements described in the document titled, "Recommended Work Practices for the Removal of Resilient Floor Coverings," published by the RFCI in 1998 [Resilient Floor Covering Institute (RFCI) in 1992-];

(5) [(3)-] employees of schools (kindergarten through 12th grade) who elect to use this exempt method must first complete the 16-hour custodial training, as required by federal regulations adopted under authority of the Asbestos Hazard Emergency Response Act of 1986 (AHERA). Possession of a valid worker registration or supervisor license eliminates the individual's need for the 16-hour training;

(6) [(4)-] the actual removal of floor coverings and adhesive under this exemption is limited to the exempted methods of removal and must be conducted according to the work practices published for distribution by the RFCI, or as directed by the commissioner of health; and

(7) [(5)-] the asbestos activity permitted by the exemption is limited to the removal of resilient floor covering and adhesives, and does not apply to any other asbestos-related activity, nor does the training or experience gained from such practices qualify for any other asbestos-related activity. The exemption is strictly limited to flooring materials maintained in a non-friable state. RFCI guidelines are to be used; however, the permissible exposure limit (PEL) may not be exceeded. If these conditions existed prior to the start of the removal or become the case due to the removal, then the person removing the floor covering is required to be licensed.

(b) (No change.)

(c) Failure to comply. Persons who [intentionally-] fail to comply with subsection (a)(1)- (7) [(4)-] of this section are subject to an administrative [a civil-] penalty of not more than \$10,000 per violation per day [\$5,000-]. Persons who fail to comply with notification requirements, or other applicable sections of the Texas Asbestos Health Protection Act (Act) or rules, are subject to administrative, civil, or criminal penalties [as provided by the Act-].

(d) (No change.)

§295.37.Licensing and Registration: Conflict of Interests.

(a) (No change.)

(b) Licensee conflict of interest. Any person licensed according to these sections to perform an asbestos-related activity in a public building is subject to the following limitations on the same project in order to avoid a potential conflict of interest. These limitations apply whether the licensee is acting in his or her own capacity or as the agent of the building owner except as noted: ~~[asbestos inspections or surveys, write management plans, or design asbestos abatement projects shall not also engage in the removal of asbestos from those buildings, except for subsection (c) of this section. It is a conflict of interest for an individual instructor to train himself/herself in order to qualify for a license, or for an individual to give himself/herself a physical in order to qualify for a license.]~~

(1) a consultant who performs asbestos inspections or surveys, writes management plans, or designs asbestos abatement projects, may not hire an asbestos abatement contractor to engage in asbestos abatement;

(2) an abatement contractor who engages in asbestos abatement may not hire a consultant to perform asbestos inspections or surveys, write management plans, or design asbestos abatement projects unless he is a building owner who is also licensed to engage in asbestos abatement and is acting as the abatement contractor in his own buildings in accordance with §295.34(d)(4) and (g) of this title (relating to Asbestos Management in Facilities and Public Buildings);

(3) an abatement contractor who engages in asbestos abatement may not hire an air monitor to perform baseline, ambient or clearance air monitoring unless the exceptions in subsection (a)(1) or (a)(3) of this section apply; and

(4) certain conflict of interest provisions under this subsection do not apply to municipalities as indicated in subsection (c) of this section.

(c) Municipalities exemption. Municipalities are exempt from certain ~~[the]~~ conflict of interest requirements. They may retain ~~[requirement only for the purpose of retaining]~~ a licensed person who may perform asbestos inspections and surveys, write management plans, design abatement projects and abate asbestos in ~~[from]~~ the same building or facility. This exemption does not allow a licensee who engages in these activities to conduct ~~[include]~~ air monitoring or abatement project clearance procedures on the same project, which includes performing visual inspection and air samples for clearance in accordance with §295.58(i)(3) of this title (relating to Operation: General Requirements) . Air monitoring activities must ~~[which shall]~~ be performed by an independent third party who is not an employee of the municipality.

(d) An individual instructor shall not train himself/herself, nor shall an individual give himself/herself a physical examination in order to qualify for a license.

§295.38.Licensing and Registration: Applications and Renewals.

(a) General requirements. Applications for a license or worker registration under these sections must be made on forms provided by the Texas Department of Health (department), shall be signed by the applicant, and must be accompanied by a check or money order for the amount of the license or renewal fee. Only applications which are complete shall be considered by the department ~~[; the burden of proof for all requirements for licensure rests with the applicant]~~.

(b) Inquiries. Potential applicants who wish to discuss or obtain information concerning qualification requirements may call ~~[do so by calling]~~ the department's Asbestos Programs Branch at (512) 834-6610 or (800) 572-5548.

(c) Denials. The department may deny an application for licensing [~~for the time periods specified below,~~] to those who fail to meet the standards established by these rules, including, but not limited to the provisions of §295.69(c) of this title (relating to Compliance: Reprimand, Suspension, Revocation, Probation). [~~sections, including, but not limited to:-~~]

~~[(1) past history of substantial violations of these sections by the applicant and/or the applicant's employees or agents—three years;]~~

~~[(2) evidence that the applicant cannot be legally employed in the United States—90 days;]~~

~~[(3) fraud, misrepresentation, or deception in obtaining, attempting to obtain, or renewing a license or registration—three years;]~~

~~[(4) failure to submit the required information and/or documentation within 90 days of a written request by the department—90 days;]~~

~~[(5) failure to submit the required fee—90 days;]~~

~~[(6) failure to maintain or to permit inspection of the records required of all licensees—one year;]~~

~~[(7) employing or permitting an unauthorized person or individual to work on any asbestos project or operation—one year;]~~

~~[(8) engaging in or attempting to engage in an asbestos related activity without a valid license—three years;]~~

~~[(9) failure to comply with any rule adopted by the board or order issued by the department—three years;]~~

~~[(10) failure to provide notice of an asbestos project or operation as required by these sections—two years;]~~

~~[(11) conviction within the past five years of a felony or a misdemeanor related to conditions for which a person engaged in asbestos activities—three years;]~~

~~[(12) failure of a licensee to complete their responsibilities during an asbestos project or operation due to insufficient financial resources—three years;]~~

~~[(13) failure to protect workers from asbestos exposures in excess of the current permissible exposure limit (PEL)—three years;]~~

~~[(14) failure to prevent asbestos contamination of areas adjacent to the abatement area—three years;]~~

~~[(15) failure to decontaminate any part of a facility or its environment, or any persons inadvertently contaminated with asbestos as a result of the persons' actions while exercising their duties under these sections—three years; or]~~

~~[(16) employing or permitting a qualified person to represent the company or firm applying for a license if the person already represents another company that is licensed, with the exception of instructors with licensed training providers—three years.]~~

(d) Penalties [~~Administrative penalty~~]. In accordance with §§295.69 - 295.70 [~~§295.70~~] of this title , penalties such as suspension, revocation or [~~(relating to Compliance: Administrative Penalty)~~] an administrative penalty may be assessed [~~,-~~] for fraud or misrepresentation in obtaining, attempting to obtain, or renewing a license or registration.

(e) Processing applications and renewals.

(1) Time periods. Applications for licensure shall be processed in accordance with the following time periods: the time from the receipt of a written application to the date of issuance by the department of a written notice of deficiency outlining the reasons why the application is deficient [unacceptable] is 30 days; failure of the applicant to submit the required information and/or documentation within 90 days of issuance of a written notice of deficiency from the department will result in the application being denied and [the] license will be issued within 60 days of the department receiving all necessary information and documents from the applicant. [applicant meeting all the licensing requirements and receipt of all acceptable documents at the department.]

(2) Reimbursement of fees. Initial application or renewal fees will be refunded only if [when] the department does not process a completed application in the time period specified in paragraph (1) of this subsection, if [or when] fee amounts are paid in excess of the correct fee amount , or if there is a double payment. Otherwise, fees for applications and renewals are not eligible for refund. A \$30 administrative fee may be deducted from refunds for double payments or excess fees.

~~[(A) The first period is a time from the receipt of a written application to the date of issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time period for each application type is 90 days for the initial contractor or supervisor license; 30 days from the renewal of contractor or supervisor license; and 30 days for the abatement worker certificate.]~~

~~[(B) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time period for each application type is 60 days for the initial contractor or supervisor license; 15 days for renewal of the contractor or supervisor license; and 30 days for the abatement worker certification.]~~

(3) (No change.)

(4) Contested case hearing. If at any time during the processing of the application, a contested case proceeding arises, [the time periods in the department's formal hearing procedures §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearings) are applicable] a hearing may be requested in writing by the applicant within 30 days of the date on the letter from the department denying the registration or license. The hearing will be conducted in accordance with the Administrative Procedures Act, Texas Government Code Chapter 2001, and the department's formal hearing rules in Chapter 1 of this title (related to the Board of Health).

(f) - (g) (No change.)

(h) Prohibition. To practice with lapsed licenses and registrations is prohibited [, regardless of when the renewal application is received. Also, licenses or registrations which have lapsed for a period exceeding 180 days cannot otherwise be renewed. A new application subject to current qualifications is required-]. A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. If a license holder makes a timely and sufficient application for the renewal of a license, the current license in his/her possession does not expire until the application has been finally granted or denied by the department.

(1) A person whose license has been expired for 90 days or less may renew the license by meeting all qualifications to renew the license, and paying to the department a renewal fee of 1-1/2 times the basic fee as follows:

(A) asbestos abatement worker - \$45;

(B) asbestos operations and maintenance contractor (Restricted) - \$180;

(C) asbestos operations and maintenance supervisor (Restricted) - \$135;

(D) asbestos abatement contractor - \$/50;

(E) asbestos abatement supervisor - \$450;

(F) individual asbestos consultant - \$450;

(G) asbestos consultant agency - \$300;

(H) asbestos project manager - \$225;

(I) asbestos inspector - \$90;

(J) individual asbestos management planner - \$180;

(K) air monitoring technician - \$75;

(L) asbestos management planner agency - \$300;

(M) asbestos laboratory - \$300;

(N) asbestos training provider - \$750; or

(O) asbestos transporter - \$300.

(2) A person whose license has been expired for more than 90 days but less than one year may renew the license by meeting all qualifications to renew the license and paying to the department a renewal fee of two times the basis fee as follows:

(A) asbestos abatement worker - \$60;

(B) asbestos operations and maintenance contractor (Restricted) - \$240;

(C) asbestos operations and maintenance supervisor (Restricted) - \$180

(D) asbestos abatement contractor - \$1,000;

(E) asbestos abatement supervisor - \$600;

(F) individual asbestos consultant - \$600;

(G) asbestos consultant agency - \$400;

(H) asbestos project manager - \$300;

(I) asbestos inspector - \$120;

(J) individual asbestos management planner - \$240;

(K) air monitoring technician - \$100;

(L) asbestos management planner agency - \$400;

(M) asbestos laboratory - \$400;

(N) asbestos training provider - \$1,000; or

(O) asbestos transporter - \$400.

(i) - (j) (No change.)

(k) Provisional Licenses. A holder of a provisional license issued in accordance with §295.39(g) of this title (relating to Licensing and Registration: Out-of-State Applicants and Out-of-State Training) can apply for a license or registration if the applicant has completed a minimum of three hours training given by a department-licensed training provider covering Texas law and regulations as indicated in §295.39(d) of this title, paid the appropriate licensing fee in addition to the non-refundable fee listed in paragraphs (1) - (4) of this section for a provisional license, and met the following requirements:

(1) asbestos abatement worker. Qualifications as stated in §295.42(e) of this title (relating to Registration: Asbestos Abatement Workers) and provisional fee payment of \$30;

(2) asbestos inspector. Qualifications as stated in §295.50(d) of this title (relating to Licensure: Asbestos Inspector) and provisional fee payment of \$60;

(3) individual asbestos management planner. Qualifications as stated in §295.51(e) of this title (relating to Licensure: Asbestos Management Planner) and provisional fee payment of \$120; or

(4) asbestos abatement supervisor. Qualifications as stated in §295.46(d) of this title (relating to Licensure: Asbestos Abatement Supervisor) and provisional fee payment of \$300.

§295.39.Licensing and Registration: Out-of-State Applicants and Out-of-State Training .

(a) - (c) (No change.)

(d) Compulsory training. All out-of-state licensees and registrants or Texas resident applicants who have received all of their training out-of-state must complete a minimum of three hours training given by a department licensed training provider on Texas law and regulations concerning ~~[affecting-]~~ asbestos prior to applying for licenses or commencement of any asbestos-related ~~[such-]~~ activity. The Texas law course must be completed within 60 days prior to applying for a TDH license. Licensee organizations must have at least one officer complete this training.

(e) Required documents. To conduct ~~[do-]~~ business in Texas, an out-of-state ~~[applicant-]~~ corporation or other business entity ~~[applicant-]~~ must:

(1) - (3) (No change.)

(4) provide proof of workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state [to-do-business-in-Texas-] and written in this state on the Texas form, or evidence of self-insurance, if workers' compensation [when-such-] insurance is required by contract specifications [specification-] or owner; see §295.34(b)(4) of this title (relating to Asbestos Management in Facilities and Public Buildings) [other agreement-].

(f) Exemption. An out of state corporation that engages only in interstate commerce and has no documentation described in subsection (e)(1) of this section may qualify as not transacting business in Texas under §8.01 of the Business Corporation Act and may request an exemption from the requirements of subsection (e)(1)-(2) of this section if the corporation submits a sworn affidavit from a corporate officer claiming the exemption.

(g) Provisional License and Registration. A person may request a provisional license for an asbestos inspector, individual asbestos management planner, asbestos abatement supervisor, or asbestos abatement worker registration.

(1) A provisional license or registration is valid until the date the department approves or denies the provisional license or registration holder's application for licensing or registration, or 180 days after the date the provisional license or registration is issued, whichever comes first.

(2) Non-refundable provisional license or registration fees are as follows:

(A) asbestos abatement worker - \$30;

(B) asbestos inspector - \$60;

(C) individual asbestos management planner - \$120; and

(D) asbestos abatement supervisor - \$300.

(3) A person may receive a provisional license issued by the department if the following criteria are met:

(A) the person requesting the provisional license or registration has been licensed or registered in good standing in that discipline for at least two years in another state, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of these rules;

(B) for the following licenses, the person requesting the provisional license has passed a national or other examination recognized by the department relating to the provisional license requested:

(i) asbestos abatement worker;

(ii) asbestos inspector;

(iii) individual asbestos management planner; and

(iv) asbestos abatement supervisor; and

(C) the person requesting the provisional license or registration is sponsored by a company that meets the insurance requirements of §295.40 of this title (related to Licensing and Registration: Insurance Requirements), with whom the provisional license or registration holder will practice during the time the person holds a provisional license or registration. The department may waive the requirement of sponsorship for an applicant if the department determines that compliance with that subsection would be a hardship to the applicant.

(h) Formerly licensed in Texas. A person who was licensed by the department, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must meet the following standards:

(1) asbestos abatement worker. Qualifications as stated in §295.42(e) of this title (relating to Registration: Asbestos Abatement Workers) and fee payment of \$60;

(2) asbestos operations and maintenance contractor (restricted). Qualifications as stated in §295.43(e) of this title (relating to Licensure: Asbestos Operations and Maintenance Contractor (Restricted)) and fee payment of \$240;

(3) asbestos operations and maintenance supervisor (restricted). Qualifications as stated in §295.44(d) of this title (relating to Licensure: Asbestos Operations and Maintenance Supervisor (Restricted)) and fee payment of \$180;

(4) asbestos abatement contractor. Qualifications as stated in §295.45(e) of this title (relating to Licensure: Asbestos Abatement Contractor) and fee payment of \$1,000;

(5) asbestos abatement supervisor. Qualifications as stated in §295.46(b) of this title (relating to Licensure: Asbestos Abatement Supervisor) and fee payment of \$600.00;

(6) individual asbestos consultant. Qualifications as stated in §295.47(f) of this title (relating to Licensure: Individual Asbestos Consultant) and fee payment of \$600;

(7) asbestos consultant agency. Qualifications as stated in §295.48(e) of this title (relating to Licensure: Asbestos Consultant Agency) and fee payment of \$400;

(8) asbestos project manager. Qualifications as stated in §295.49(d) of this title (relating to Licensure: Asbestos Project Manager) and fee payment of \$300;

(9) asbestos inspector. Qualifications as stated in §295.50(d) of this title (relating to Licensure: Asbestos Inspector) and fee payment of \$120;

(10) individual asbestos management planner. Qualifications as stated in §295.51(e) of this title (relating to Licensure: Asbestos Management Planner) and fee payment of \$240;

(11) air monitoring technician. Qualifications as stated in §295.52(e) of this title (relating to Licensure: Air Monitoring Technician) and fee payment of \$100;

(12) asbestos management planner agency. Qualifications as stated in §295.53(f) of this title (relating to Licensure: Asbestos Management Planner Agency) and fee payment of \$400;

(13) asbestos laboratory. Qualifications as stated in §295.54(f) of this title (relating to Licensure: Asbestos Laboratory) and fee payment of \$400;

(14) asbestos training provider. Qualifications as stated in §295.55(d) of this title (relating to Licensure: Asbestos Training Provider) and fee payment of \$1,000;or

(15) asbestos transporter. Qualifications as stated in §295.56(d) of this title (relating to Licensure: Asbestos Transporters) and fee payment of \$400.

§295.40.Licensing and Training and Registration: Insurance Requirements.

Persons required to have insurance must obtain policies for required coverage [~~and~~] in the amounts specified in these sections. Self-insurance is allowed for governmental agencies and for persons who meet the self-insurance requirements under the insurance laws of Texas and receive written approval from the Texas Department of Insurance or Texas Workers' Compensation Commission. Proof of approval by the appropriate authority as required for non-governmental persons must be submitted with the application. Liability insurance shall include pollution liability for asbestos exposure. Additional requirements are as follows:

(1) - (4) (No change.)

~~[(5) Attempts to avoid proper payment of required workers' compensation insurance by hiring temporary or leased employees who are not properly covered or by paying employees in such a way as to obscure the intent~~

~~of an individual's employment will be considered a violation of these sections and the requirement to obtain proper insurance.]~~

§295.41.Licensure: State Licensing Examination.

(a) - (d) (No change.)

(e) Grading and reporting of examination scores. A grade of 70% must be achieved in order to pass the examination. Scores will be reported only by mail no later than 30 working days after the date the test is taken ; the notification will, if appropriate, contain information regarding re-examination.

(f) (No change.)

(g) Request for information concerning exam. If requested in writing by a person who fails a licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(h) Testing service. If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service;

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day; and

(3) the department may require a testing service to notify a person of the results of the person's examination.

§295.42.Registration: Asbestos Abatement Workers.

(a) Registration requirement. Individuals must be registered as asbestos abatement workers in compliance with these sections to perform asbestos abatement work in a public building, including, but not limited to, [~~transporting, loading or unloading asbestos, or~~] performing any maintenance, repair, installation, renovation, or cleaning that dislodges, breaks, cuts, abrades, or impinges on asbestos material. Registrations are valid for a period of one year from the effective date and are renewable.

(b) - (d) (No change.)

(e) Qualifications. Applicants for registration as asbestos abatement workers shall provide:

(1) a certificate of training from a training provider approved by or acceptable to the department indicating successful completion within the past 12 months of the approved training course for abatement workers or the annual refresher training course, as described in §295.64 (d) of this title (relating to Training: Required Asbestos Training Courses). Evidence of successful completion of the contractor/supervisor course may be substituted for the initial worker course.

(2) - (3) (No change.)

(4) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background.

(f) (No change.)

§295.43.Licensure: Asbestos Operations and Maintenance Contractor (Restricted)

(a) - (d) (No change.)

(e) Qualifications. Applicants for licensing as asbestos operations and maintenance contractors shall provide:

(1) a certificate of training from a training provider approved by or acceptable to the Texas Department of Health (department), indicating successful completion within the past 12 months of the approved training course for asbestos abatement contractors and supervisors or the annual refresher training, as described in §295.64 (c) of this title (relating to Training: Required Asbestos Training Courses). An applicant organization shall designate at least one individual as their responsible person who will comply with this training requirement. This person must be responsible for asbestos operations and compliance with all asbestos rules and regulations;

~~[(2) a certificate of good standing, issued by the Texas State Comptroller's Office, stating that all franchise taxes due from the applicant have been paid;]~~

(2) ~~[(3)]~~ a State of Texas sales tax account number for the applicant organization;

(3) ~~[(4)]~~ proof of workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in the state on the Texas form, or evidence of self-insurance, if workers' compensation insurance is required by the specifications or owner ; see §295.34(b)(4) of this title (relating to Asbestos Management in Facilities and Public Buildings) ~~[(see §295.43(e)(4) of this title (relating to Licensure: Asbestos Operations and Maintenance Contractor (Restricted)) for additional information)]~~;

(4) ~~[(5)]~~ a written respiratory protection plan to be maintained and adhered to during periods of abatement activity;

(5) ~~[(6)]~~ a description of the protective clothing and respirators which will be used;

(6) ~~[(7)]~~ a description of the site decontamination procedures;

(7) ~~[(8)]~~ a description of the procedures for handling waste containing asbestos;

(8) ~~[(9)]~~ a description of the removal and encapsulation methods;

(9) ~~[(10)]~~ a description of the air-monitoring procedures;

(10) ~~[(11)]~~ a description of final cleanup procedures;

(11) ~~[(12)]~~ a description of the provisions for recordkeeping;

(12) ~~[(13)]~~ a list of operations and maintenance projects completed in the past year;

(13) ~~[(14)]~~ a copy of all disposal manifests for projects completed in the past year;

(14) ~~[(15)]~~ a list of asbestos inspections performed by other agencies;

(15) ~~[(16)]~~ copies of all citations issued; ~~[and]~~

(16) ~~[(17)]~~ proof of successfully passing the department examination for asbestos abatement contractors and supervisors;

(17) ~~[(18)]~~ a copy of the wallet-size photo-identification card of the responsible person from the training course, as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training:

Approval of Training Courses). Persons submitting out-of-state training certificates with their applications shall submit the necessary photo-identification they obtain when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title; and

(18) [(19)-] a current one-inch by one-inch photograph of the face of the responsible person. The photograph submitted to the department for licensing purposes must have a white background.

(f) - (g) (No change.)

§295.44.Licensure: Asbestos Operations and Maintenance Supervisor (Restricted).

(a) - (c) (No change.)

(d) Qualifications. The applicant for an O&M supervisor (restricted) license shall provide:

(1) a certificate of training from a training provider approved by or acceptable to the Texas Department of Health (department) indicating successful completion within the past 12 months of the approved training course for abatement contractors and project supervisors, or the annual refresher training as described in §295.64 (c) of this title (relating to Training: Required Asbestos Training Courses);

(2) - (3) (No change.)

(4) a current one-inch by one-inch photograph of the face. The photograph submitted to the department for licensing purposes must have a white background ; and

(5) (No change.)

(e) - (f) (No change.)

§295.45.Licensure: Asbestos Abatement Contractor.

(a) - (d) (No change.)

(e) Qualifications. Applicants for licensing as asbestos abatement contractors shall provide:

(1) a certificate of training from a training provider approved by or acceptable to the department, indicating successful completion within the past 12 months of the approved training course for asbestos abatement contractors and project supervisors or the continuing annual refresher training, as described in §295.64 (c) of this title (relating to Training: Required Asbestos Training Courses). An applicant shall designate at least one individual for the purpose of complying with this training requirement. This individual must be responsible for asbestos operations and compliance with all asbestos rules and regulations;

~~[(2) a certificate of good standing, issued by the Texas State Comptroller's Office, stating that all franchise taxes due from the applicant have been paid;]~~

(2) [(3)-] if the applicant is situated outside the State of Texas, a certificate of authority issued by the Secretary [secretary-] of State [state-], authorizing the corporation to do business in the state;

(3) [(4)-] a State of Texas sales tax account number for the applicant organization;

(4) [(5)-] evidence of asbestos abatement liability insurance as required in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), in the amount of \$1 million, when doing work for hire;

(5) [~~(6)~~] proof of workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance, if workers' compensation insurance is required by the specifications or owner; [~~(7)~~] see §295.34(b)(4) of this title (relating to Asbestos Management in Facilities and Public Buildings) [~~for further guidance~~];

(6) [~~(7)~~] a written respiratory protection plan to be maintained and adhered to during periods of abatement activity;

(7) [~~(8)~~] a description of the protective clothing and respirators which will be used;

(8) [~~(9)~~] a description of the site decontamination procedures;

(9) [~~(10)~~] a description of the procedures for handling waste containing asbestos;

(10) [~~(11)~~] a description of the removal and encapsulation methods;

(11) [~~(12)~~] a description of the air-monitoring procedures;

(12) [~~(13)~~] a description of final cleanup procedures;

(13) [~~(14)~~] a description of the provisions for recordkeeping;

(14) [~~(15)~~] a list of abatement projects completed in the past year;

(15) [~~(16)~~] a copy of all disposal manifests for projects completed in the past year;

(16) [~~(17)~~] a list of asbestos inspections performed by other agencies;

(17) [~~(18)~~] copies of all citations issued;

(18) [~~(19)~~] proof of successfully passing the department examination for asbestos contractors, if required;

(19) [~~(20)~~] a copy of the wallet-size photo-identification card of the responsible person from the training course, as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). Persons submitting out-of-state training certificates with their applications shall submit the necessary photo-identification they obtained when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title; and

(20) [~~(21)~~] a current one-inch by one-inch photograph of the face of the responsible person. The photograph submitted to the department for licensing purposes must have a white background.

(f) Responsibilities. The asbestos abatement contractor shall be responsible for:

(1)- (9) (No change.)

(10) proof of workers' [~~maintenance of workers-~~] compensation insurance issued by a company licensed to do business in this state, and written in this state on a Texas form [~~prepared by the Texas Department of Insurance~~], or evidence of self-insurance, if workers' compensation insurance is required by the [~~contract~~] specifications or [~~a building-~~] owner; see §295.34(b)(4) of this title; and

(11) (No change.)

§295.46.Licensure: Asbestos Abatement Supervisor.

(a) - (c) (No change.)

(d) Qualifications. Applicants for licensing as asbestos abatement supervisors are required to provide:

(1) ~~[work experience to qualify for an asbestos abatement supervisor license; verifiable-]~~ written documentation ~~[must be provided-]~~ of at least 90 days of verifiable ~~[legally-qualifiable-]~~ work experience as a trained and registered worker performed ~~[over a period of not less than 12 months and-]~~ within the past 24 months ~~.[or-]~~ Qualifying ~~[qualifiable-]~~ experience ~~[which-]~~ includes:

(A) project site preparation and establishing the abatement enclosure for friable asbestos-containing ~~[asbestos containing-]~~ building material (ACBM) ~~[(ACM)-]~~;

(B) - (G) (No change.)

(H) work performed as an asbestos abatement ~~[project-]~~ supervisor or worker licensed in another state ~~[can qualify as experience-]~~; and

(I) (No change.)

(2) a certificate of training from a training provider approved by or acceptable to the Texas Department of Health (department) indicating successful completion within the past 12 months of the approved course for abatement contractors and supervisors, or the current annual refresher training, as described in §295.64 (c) of this title (relating to Training: Required Asbestos Training Courses);

(3) - (4) (No change.)

(5) a current one-inch by one-inch photograph of the face . The photograph submitted to the department for licensing purposes must have a white background ; and

(6) (No change.)

(e) Responsibilities The asbestos abatement ~~[project-]~~ supervisor shall:

(1) - (6) (No change.)

(f) (No change.)

§295.47.Licensure: Individual Asbestos Consultant.

(a) Licensing requirements. An individual must be licensed as an asbestos consultant to design asbestos abatement projects. A company employing an individual asbestos consultant may not hire an inspector, project manager, air monitoring ~~[monitor-]~~ technician, or another individual asbestos consultant without obtaining an asbestos consultant agency license.

(1) Asbestos abatement project design includes the survey ~~[inspection-]~~ of public buildings for asbestos-containing building material (ACBM) ~~;~~ the evaluation and selection of appropriate asbestos abatement methods ; ~~;~~ project layout ; ~~;~~ the preparation of plans, specifications and contract documents ; ~~;~~ and the review of environmental controls, abatement procedures and personal protection equipment to be employed every day of the project, from the start through the completion dates of the project [during the project]. A consultant may be hired by a building owner or the owner's agent to perform asbestos project management. If performing [hired to perform the-] asbestos project management [by the building owner-], the consultant is responsible to ensure proper procedures are used from the time of arrival of the abatement contractor on site through the completion of the removal of the containment and the departure of the contractor from the project site. Alternative control methods as referred to in 29 CFR §1926.1101(g)(6), such as dry removal or no negative

air, shall be reviewed and certified in writing as at least as protective of the public health as the standard method described in §296.60 [-] by a Certified Industrial Hygienist (CIH) or a Professional Engineer (PE) and shall be approved in writing by the Chief of the Asbestos Programs Branch, Toxic Substances Control Division, prior to the start of abatement. An applicant should allow 30 days from the date of submitting an alternative control method until final TDH approval or denial.

(2) (No change.)

(b) Scope: Individual licenses. In addition to the design of asbestos abatement projects, individual asbestos consultants are licensed to provide:

(1) asbestos surveys and assessment of the condition of ACBM [~~(ACM)~~];

(2) - (6) (No change.)

(c) - (e) (No change.)

(f) Qualifications [~~Qualification for licensing~~]. To qualify as an individual asbestos consultant, individuals shall provide:

(1) - (2) (No change.)

(3) proof of having successfully completed the following training courses or the necessary annual refresher training within the past 12 months at an approved training facility:

(A) the approved training course for abatement project designers, or the current annual refresher, according to §295.64(b) of this title (relating to Training: Required Asbestos Training Courses) [~~, or for applications received prior to December 31, 1993, the contractor/supervisor training, according to §295.64(e) of this title (relating to Training: Required Asbestos Training Courses)];~~

(B) a modified three-day training course in sampling techniques and use of monitoring equipment, as required for air monitoring [~~monitor~~] technician, or the current annual refresher training according to §295.64(g) of this title (relating to Training: Required Asbestos Training Courses). The initial course is not required of certified industrial hygienists ; [-] however , the refresher is required for license renewal or any subsequent reapplication for this license ; and

(C) training in asbestos surveys, as required for both licensed asbestos building inspectors and management planners, or the current annual refresher, according to §§295.64(e) and (f) of this title (relating to Training: Required Asbestos Training Courses) . [-]

(4) (No change.)

(5) a current one-inch by one-inch photograph of the face . The photograph submitted to the department for licensing purposes must have a white background ; and

(6) (No change.)

(g) (No change.)

(h) Responsibilities. The responsibilities of licensed asbestos consultants shall include the following:

(1) preserve public health and diminish or eliminate hazards or potential hazards caused by the presence of ACBM [~~(ACM)~~] in public buildings;

(2) - (5) (No change.)

(i) (No change.)

§295.48.Licensure: Asbestos Consultant Agency.

(a) (No change.)

(b) Authorization and conditions. A licensed asbestos consultant agency is specifically authorized to employ asbestos consultants, asbestos project managers, asbestos inspectors and management planners, and air monitoring technicians who are currently licensed under these rules ~~[sections]~~ to assist in the conduct and fulfillment of the agency's asbestos consultation activity, as necessary. As a condition of licensure, an asbestos consultant agency must notify the department in writing of the addition or deletion of the designated individual asbestos consultant within ten days of any changes. ~~[comply with the following:]~~

~~[(1) any office, established within the state, that conducts asbestos consulting activities must have at least one licensed asbestos consultant in residence who is responsible for such activities. Offices that do not conduct asbestos consulting activities and do not advertise such services are exempt from this requirement;]~~

~~[(2) notify the department in writing of any additions or deletions of responsible individual asbestos consultants within 10 days of such occurrences;]~~

~~[(3) refrain entirely from asbestos consulting activity at any office during any period without the active employment of at least one responsible individual licensed asbestos consultant at that location.]~~

(c) - (d) (No change.)

(e) ~~[Qualification for licensing]~~ Qualifications. Applicants for licensing as an asbestos consultant agency shall submit as applicable:

(1) (No change.)

(2) evidence of workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance, if workers' compensation is required by the specifications or owner (see §295.34(b)(4) of this title (relating to Asbestos Management in Facilities and Public Buildings) for additional guidance);

~~[(3) a certificate of good standing issued by the State Comptroller of Public Accounts Office for the State of Texas for a corporation or other business entity; and]~~

(3) ~~[(4)]~~ if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in the state.

(f) (No change.)

§295.49.Licensure: Asbestos Project Manager.

(a) - (c) (No change.)

(d) Qualifications. To qualify for a license, an applicant must provide:

(1) - (4) (No change.)

(5) a current one-inch by one-inch photograph of the face . The photograph submitted to the department for licensing purposes must have a white background ; and

(6) (No change.)

(e) (No change.)

§295.50.Licensure: Asbestos Inspector.

(a) Licensing. An individual must be licensed as an asbestos inspector to conduct asbestos surveys [~~inspections~~] in public buildings. To perform surveys [~~inspections~~], an asbestos inspector must be employed by a licensed asbestos consultant agency or licensed asbestos management planner agency. The scope of duties include the collection of bulk samples of suspected asbestos-containing building material (ACBM); determining the location and condition of ACBM and suspect ACBM in a public building; and documenting inspection results. This license is not required for a licensed management planner; however, the management planner must provide documentation of completion of the inspectors course or refresher when renewing a management planner license.

(b) - (c) (No change.)

(d) Qualifications [~~Qualification~~]. To qualify for a license, an applicant must provide:

(1) - (3) (No change.)

(4) proof of work experience [~~: applicants for licensing as asbestos inspectors are required to submit verifiable written documentation of prior work experience, including professional references with their application forms which~~] includes participation in at least five asbestos surveys [~~inspections~~] performed under the direct supervision of a licensed management planner, licensed asbestos inspector, or licensed asbestos consultant;

(5) (No change.)

(6) a current one-inch by one-inch photograph of the face . The photograph submitted to the department for licensing purposes must have a white background ; and

(7) (No change.)

(e) - (f) (No change.)

§295.51.Licensure: Asbestos Management Planner.

(a) (No change.)

(b) Scope. In addition to the development of management plans, a licensed management planner is licensed to perform surveys and assess the condition of asbestos-containing building material (ACBM) [~~(ACM)~~], as provided in §295.50 of this title (relating to Licensure: Asbestos Inspectors).

(c) - (d) (No change.)

(e) Qualifications [~~Qualification~~]. To qualify for a license as an asbestos management planner, an applicant must demonstrate in a manner acceptable to the Texas Department of Health (department) that he or she meets [~~they meet~~] the following applicable qualifications. The applicant must:

(1) - (4) (No change.)

(5) provide a current one-inch by one-inch photograph of the face . The photograph submitted to the department for licensing purposes must have a white background ;

(6) provide proof of successfully passing the department examination for an individual management planner, if required; [~~and~~-]

(7) if the applicant is an asbestos management planner working for hire, provide proof of professional liability insurance coverage in the amount of \$1 million for errors and omissions, or be covered under an employer's policy as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements) ; and [-]

(8) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the department "Physician's Written Statement" form only.

(f) - (g) (No change.)

§295.52.Licensure: Air Monitoring Technician.

(a) Licensing. An air monitoring technician (AMT) must be licensed to perform air monitoring services for an asbestos abatement project or related activity in a public building. An air monitoring technician may obtain baseline, area, personal, and clearance samples. For purposes of asbestos abatement activities, a licensed air monitoring technician shall be an employee of an asbestos laboratory or an asbestos consultant agency when taking area or clearance samples, or an employee of or under contract to an asbestos abatement or O&M contractor, when taking personal samples.

(b) Authority of air monitoring technicians. Air monitoring technicians may obtain baseline, area, personal and clearance samples, if qualified in accordance with subsection (e) of this section, and may perform the analysis of airborne fibers in the field if employed by a licensed asbestos laboratory. An AMT employed by an abatement or O&M contractor is limited to taking personal samples for compliance with Occupational Safety and Health Administration (OSHA) regulations [(-) 29 [~~Code of Federal Regulations~~-] CFR §1926.1101[+)], which must [~~then~~-] be sent to a licensed laboratory for analysis.

(c) - (d) (No change.)

(e) Qualifications. An applicant, in order to qualify for an air monitoring technician license, shall submit the following:

(1) (No change.)

(2) a certificate of training indicating successful completion within the past 12 months of the approved training course for air monitoring technicians or the current annual refresher training as described in §295.64 (g) of this title (relating to Training: Required Asbestos Training Courses), [(~~The~~-] the initial course is not required of certified industrial hygienists ;[+] however , the refresher is required for all subsequent license renewals [~~renewal~~-)];

(3) - (4) (No change.)

(5) a current one-inch by one-inch photograph of the face . The photograph submitted to the department for licensing purposes must have a white background ;

(6) - (7) (No change.)

(f) - (g) (No change.)

§295.53.Licensure: Asbestos Management Planner Agency.

(a) (No change.)

(b) Scope. The agency may perform all [~~those~~] responsibilities allowed an individual management planner and may also perform surveys [~~inspections~~] if the appropriate individuals are licensed to do so.

(c) - (e) (No change.)

(f) Qualification for licensing. Applicants for licensing as an asbestos management planner agency [~~Asbestos Management Planner Agency~~] shall submit the following:

(1) (No change.)

(2) evidence of workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance under Texas law, if workers' compensation insurance is required by the specifications or owner; see §295.34(b)(4); and

[~~(3) a certificate of good standing issued by the State Comptroller of Public Accounts Office for the State of Texas for a corporation or other business entity; and~~]

(3) [~~(4)~~] if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in this state.

(g) Responsibilities. A licensed asbestos management planner agency shall be responsible for:

(1) employing generally accepted principles and practices in performing asbestos surveys [~~inspections~~] and producing asbestos management plans;

(2) - (3) (No change.)

§295.54.Licensure: Asbestos Laboratory.

(a) - (e) (No change.)

(f) Qualifications. Applicants for licensing as an asbestos laboratory shall submit as applicable:

(1) (No change.)

[~~(2) if the applicant is a Texas corporation, a certificate of good standing, issued by the Texas State Comptroller's Office;~~]

(2) [~~(3)~~] if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in the state;

(3) [~~(4)~~] evidence of professional liability insurance for errors and omissions in the amount of at least \$1 million when doing work for hire as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements); and

(4) [~~(5)~~] evidence of workers' [~~workers~~] compensation insurance issued by a company authorized and licensed to issue workers' [~~workers~~] compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance, if workers' [~~workers~~] compensation insurance is required by the

specifications or owner ; see §295.34(b)(4) of this title (relating to Asbestos Management in Facilities and Public Buildings).

§295.55.Licensure: Asbestos Training Provider.

(a) - (c) (No change.)

(d) Qualification. To qualify for a license, an applicant must demonstrate to the department that they meet the applicable requirements. Documentation required of applicants for licensing as asbestos training providers is as follows.

(1) - (6) (No change.)

(7) Attendance and course completion standards. Attendance and course completion standards are as follows.

(A) (No change.)

(B) A trainee is not eligible to complete a given course if more than 10% of the session has been missed, and the qualifying exam shall not be offered in such instances. The 10% includes being absent from the course at times other than allotted break periods and being in the room but not engaged in the course in the judgment of the instructor. The records of that session shall be marked by the instructor to this effect.

(C) A training provider must certify each examination taken by a trainee as to whether a minimum score of 70% correctly answered questions was achieved. The training provider shall have a written policy concerning the administration of written examinations including allowing only one written re-examination per student for each course. The use of the same questions for both the original and re-examination is not allowed ~~[re-examinations which shall apply to all such cases of failure of the initial examination-]~~. Oral examinations are not allowed although the written examination questions and answers may be read to a student who must mark the correct answer on an answer sheet. If a student fails [Failure-of-] the written re-examination [means-that-] the student [course-] will have to repeat the course and pass the new examination [be-repeated-].

(8) (No change.)

(9) Training requirements. A training provider must provide each course as a separate entity, as follows.

(A) - (B) (No change.)

(C) Basic or refresher courses shall be conducted in only one discipline and not be combined with courses of other disciplines, i.e., an abatement worker course and a contractor/supervisor course cannot be taught as a combined course. This prohibition against combined training applies to hands-on training sessions as well as other aspects of the course.

(10) - (11) (No change.)

(12) The applicant must submit the following with the application:

(A) publications listed in §295.65(d)(3) of this title (relating to Training: Approval of Training Courses); and

~~[(B) if the applicant is a Texas corporation, a certificate of good standing issued by the Texas State Comptroller's Office must be submitted with the application for licensure; and]~~

(B) [(C)-] if the applicant is a resident outside the State of Texas, a certificate of authority issued by the Texas Secretary of State authorizing the corporation to do business in the state[, must be submitted with the application for licensure-].

(e) Conditions of issuance. The following conditions and agreements shall apply to issuance of licenses under this section.

(1) There shall be an agreement to send at least one course instructor to any meeting sponsored by the department for the purpose of ensuring quality training courses in asbestos abatement and related topics. [~~There will be no more than two such meetings per year.~~]

(2) Course schedules shall be provided to the department 14 working days prior to the start of any course on the schedule. Requests for exceptions to the 14 working day rule shall be submitted in writing to the Asbestos Programs Branch Training Coordinator along with a written justification why the notice could not be made earlier. Approval for shorter notice will be granted, if appropriate, in writing. The minimum time for course notification, even if an exception is granted, is at least 72 hours prior to the start of the course. If there is a cancellation of a scheduled course, the department shall be notified in writing at least 24 hours in advance. Facsimiles of cancellation notices will be accepted, but the training provider must follow-up with an original cancellation notice with the signature of an authorized representative of the training provider. In the event the instructor cannot provide written notice of cancellation at least 24 hours in advance, the instructor shall notify the department not later than two hours after the scheduled class start time and provide a written justification why the cancellation could not be made earlier. Exceptions to the 24 hour cancellation rule will be made by the department only if sufficient justification is provided and written approval received. [The department shall be furnished a copy of all scheduled courses and shall be notified in writing, at least 24 hours in advance of any scheduled course cancellations. Facsimiles will be accepted, but it is the responsibility of the training provider to follow-up with a hard copy bearing the responsible party's signature. In the event the instructor cannot provide notice of cancellation at least 24 hours in advance, an exception to this requirement may be granted. The instructor shall notify the department within two hours after the scheduled class start time and provide complete written justification as to why this cancellation could not be foreseen. Course schedules shall be provided to the department 14 days prior to the conduct of any course on the schedule. Exceptions may be made only with a complete justification being provided to the department and approval received. The department may consider variances with this rule. Requests for variances shall be submitted in writing to the Asbestos Programs Branch, Toxic Substances Control Division. Approval will be granted, if appropriate, in writing.]

(3) - (4) (No change.)

(f) Approval of course instructors and guest speakers. Course instruction must be provided by EPA or State-approved instructors. The training provider shall submit a resume of each instructor and guest speaker who will participate in the conduct of any asbestos training course to be approved by the department. Prior approval of instructors and guest speakers is required. The training provider will notify the department of additions and deletions to their instructor roster within 15 working days of actual occurrence.

(1) - (4) (No change.)

(5) Responsibilities. The asbestos training provider shall be responsible for:

(A) complying with standards of operation, as described in §295.64 [~~§295.58~~] of this title (relating to Training: Required Asbestos Training Courses) [~~Operations: General Requirements~~];

(B) (No change.)

(C) providing a teaching [~~the~~] environment, training, and testing [~~of sufficient quality that the student retains the required elements of the course~~] as specified ;

(D) - (E) (No change.)

(6) (No change.)

(g) (No change.)

§295.56.Licensure: Asbestos Transporters.

(a) Licensing. A person must be licensed as an asbestos transporter in compliance with these sections to engage in the transport of asbestos removed from a public building ~~[in the State of Texas]~~. The requirement for licensure does not apply to the removal of flooring materials done in accordance with §295.36 of this title (relating to Licensing and Registration: Exemption; Emergency.).

(b) - (c) (No change.)

(d) Qualifications. To qualify for a transporter license, an applicant must submit the following:

~~[(1) if the applicant is a Texas corporation, a certificate of good standing issued by the Texas State Comptroller's Office must be submitted with the application for licensure;]~~

(1) ~~[(2)]~~ if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State authorizing the corporation to do business in the state ~~[must be submitted with the application for licensure]~~;

(2) ~~[(3)]~~ pollution liability insurance in the amount of \$1 million as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), when transporting asbestos-containing building material (ACBM) for hire;

(3) ~~[(4)]~~ a copy of the ~~[his/her]~~ emergency response plan in accordance with 29 CFR §1910.120(q)(1); and

(4) ~~[(5)]~~ evidence of workers' ~~[workers]~~ compensation insurance issued by a company authorized and licensed to issue workers' ~~[workers]~~ compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance , if workers' compensation insurance is required by the specifications or owner ; see §295.34(b)(4) of this title (related to Asbestos Management in Facilities and Public Buildings).

(e) Responsibilities. An asbestos transporter shall:

(1) - (6) (No change.)

(7) ensure asbestos-containing ~~[insure asbestos-containing]~~ waste material is properly labeled; and

(8) (No change.)

§295.58.Operations: General Requirements for Public Buildings.

(a) (No change.)

(b) Supervision.

(1) - (2) (No change.)

(3) During every day of the project, from the start date and through the completion date of the project ~~[During any period of actual abatement of asbestos]~~, an abatement supervisor shall be stationed within the containment area at least 25% of the time for the purpose of supervising ~~[the progress of]~~ the abatement work.

(4) - (8) (No change.)

(c) Employees. Each employee or agent of any licensee who must intentionally disturb, handle, or otherwise work with asbestos-containing building material (ACBM) ~~[ACM-]~~, or who shall engage in an asbestos abatement project, asbestos O&M activities or other asbestos-related activity shall have an annual physical examination, respirator fit-test, be properly equipped and trained, and be licensed or registered in accordance with these sections.

(d) - (e) (No change.)

(f) Respirator program. Each employer licensee shall be responsible for establishing and maintaining a written respiratory protection program, as required by OSHA regulations in 29 Code of Federal Regulations (CFR) §1910.134, as amended. Each employer licensee shall maintain a current copy of the respiratory protection program at all project locations. The written respiratory program must establish the type, sizes, and brand(s) of respirator; fit testing procedures; medical testing requirements; cleaning guidelines; repair guidelines; records of repairs; and safety guidelines for all respirators in use at the project location. A copy of 29 CFR §1910.134 is not acceptable as a written respiratory protection program. Respirators shall be properly worn at all times in containment during asbestos abatement activity.

(g) Individual respirator fit. The licensee must maintain in safe working condition a sufficient number of respirators of the types and styles approved by the National Institute of Occupational Safety and Health (NIOSH) ~~[and Health/Mine Safety and Health Administration (NIOSH/MSHA)-]~~ to meet all anticipated requirements of his/her employees; and any employee whose facial characteristics, hair, mustache, or beard preclude a tight fit of a negative-pressure respirator shall not be allowed to enter the containment ~~[area-]~~ of an asbestos operation using this type of respirator.

(h) Sampling for asbestos. A survey performed by a licensed asbestos inspector must use ~~[using-]~~ accepted standards such as the Asbestos Hazard Emergency Response Act (AHERA) protocol specified in 40 CFR §§763.85-763.88. ~~[or, as-]~~ At a minimum, three samples for each homogeneous area are ~~[is-]~~ required to rebut ~~[or confirm-]~~ the presence of ACBM for abatement or operations and maintenance (O&M) activities, regardless of the protocol used. Only laboratories licensed by the State of Texas may be used to evaluate samples taken from within public buildings in Texas. Building materials ~~[material-]~~ that have ~~[has-]~~ not been surveyed in accordance with this subsection and are suspect asbestos-containing material shall be treated as containing asbestos ~~[sampled, and is not beyond question as to asbestos content, must be treated as ACBM-].~~

(1) Composite sample analysis in a public building is not allowed.

(2) Point counting of asbestos samples supersedes and replaces the initial PLM analysis results. TEM and gravimetric analysis are acceptable means of asbestos analysis when used in conjunction with PLM analysis. TEM and gravimetric analysis of asbestos samples supersede and replace PLM and point counting.

(3) Each sample analyzed by visual PLM as greater than one percent asbestos is regarded as ACBM, unless that sample result is rebutted through additional analysis (i.e. point counting).

(i) Project monitoring. The asbestos consultant shall specify the protocol for monitoring the project. This will include the duties and responsibilities of the project manager and the air monitoring requirements. Only one cassette may be placed on a pump at a time.

(1) (No change.)

(2) Ambient.

(A) Ambient samples will be collected every day of the project, from the start date and through the completion date of the project ~~[during the project-]~~ and analyzed in accordance with the latest edition of NIOSH 7400 protocol, counting rules A.

(B) (No change.)

(3) (No change.)

(j) (No change.)

(k) Documents required to be on-site are as follows:

(1) all current licenses, registrations, ~~[and]~~ accreditation certificates and a copy of current physical examinations and current respirator fit-test records. The department licensed company is responsible for its employees' documents to be on-site ;

(2) - (4) (No change.)

(l) Prohibitions.

(1) (No change.)

(2) Disposal of improperly labeled or classified asbestos-containing ~~[asbestos-containing]~~ waste material as defined in 40 CFR Part 61, Subpart M is prohibited.

§295.59.Operations: Operations and Maintenance (O&M) Requirements for Public Buildings.

(a) (No change.)

(b) Work practices. Work practices shall include the following requirements.

(1) (No change.)

(2) Only licensed persons, responding emergency personnel (police, fire, EMS, etc.), specialists required for assistance as determined by the consultant, or governmental inspectors are allowed to ~~[may]~~ enter the regulated areas.

(3) - (7) (No change.)

(8) Asbestos shall be doubled bagged by placing asbestos-contaminated waste material into bags ~~[bagged and placed in containers]~~, and shall be disposed of in accordance with §295.60 of this title (relating to Operations: Abatement Practices and Procedures) and 40 CFR Part 61, Subpart M.

(9) - (10) (No change.)

§295.60.Operations: Abatement Practices and Procedures for Public Buildings.

(a) General provisions. The following general work practices are minimum requirements for protection of public health, and do not constitute complete or sufficient specifications for an asbestos abatement project. More detailed requirements in plans and specifications for a particular abatement project, or requirements that address the unusual or unique circumstances of a project, may take precedence over the provisions of this section. The specifications written for the abatement project shall also include the required air clearance procedures.

(1) (No change.)

(2) An asbestos project consultant, who is licensed under §295.47 of this title (relating to Licensure: Individual Asbestos Consultant) ~~[and is a Professional Engineer (PE) or Certified Industrial Hygienist (CIH)]~~, may

specify work practices that vary from the requirements [~~provisions~~] of this section as long as the work practices specified are at least as protective of public health [] and are clearly described in the project notification submitted to the Texas Department of Health (department). The burden of proof for establishing equivalent protection rests with the asbestos consultant. Alternative control methods as referred to in 29 CFR §1926.1101(g)(6), such as dry removal or no negative air, shall be reviewed and certified in writing by a Certified Industrial Hygienist (CIH) or a Professional Engineer (PE) and shall be approved in writing by the Chief of the Asbestos Programs Branch, Toxic Substances Control Division, prior to the start of abatement. An applicant should allow 30 days from the date of submitting an alternative control method until final department approval or denial is issued.

(3) If asbestos-containing building material (ACBM) [~~(ACM)~~] is to be removed or encapsulated, it must be within a regulated area.

(4) Only licensed persons, responding emergency personnel (police, fire, EMS, etc.), specialists required for assistance as determined by the consultant, or governmental inspectors are allowed to [~~may~~] enter the regulated area.

(b) - (d) (No change.)

(e) Decontamination system. A worker decontamination enclosure system in the regulated area shall be used , consisting of a clean room, shower room, and equipment room, each separated from the other and from the containment area by airlocks accessible through doorways. Except for the doorways and the make-up air provisions for the enclosure, the worker decontamination system shall be sealed against leakage of air. All personnel must exit the containment area through the shower before entering the clean room. No asbestos-contaminated individuals or items shall enter the clean room. The contractor shall ensure that workers and supervisors:

(1) remove all gross contamination and debris from their protective clothing before leaving the containment area;

(2) remove their protective clothing in the equipment room and deposit the clothing in impermeable bags or containers labeled in accordance with subsection (j)(1) of this section;

(3) do not remove their respirators in the equipment room;

(4) shower prior to entering the clean room; and

(5) enter the clean room before changing into street clothes.

(f) - (g) (No change.)

(h) High-efficiency particulate air (HEPA) cleaning. Except with prior written approval from the department, cleaning procedures shall use wet methods and HEPA vacuuming. A working HEPA vacuum shall remain on-site every day of the project, from the start date and through the completion date of the project, and the unit shall have proper HEPA filter(s) in place.

(i) (No change.)

(j) Requirements for removal. The requirements for removing ACBM are that:

(1) all ACBM shall be adequately wetted prior to removal or other handling; material to be bagged shall be [~~will be~~] marked per the applicable Occupational Safety and Health Administration (OSHA) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations and doubled bagged by placing asbestos-contaminated waste material into bags with true 6 mil thickness or may be placed in a bag that meets

the following criteria: tear resistance of M.D. 300 grams, T.D. 2,068 grams, and dart impact of 216 grams. Documentation from the manufacturer shall be on site :[~~In order to double bag the asbestos waste the inner bag must be no more than half full, excess air must be squeezed out, the top twisted closed, folded over, sealed with duct tape, rinsed off or HEPA vacuummed to remove asbestos contamination, and placed inside another bag (or in a fiberboard drum). If an outer bag is used excess air must be squeezed out and the outer bag twisted closed, the top folded over and sealed with duct tape. If a fiberboard drum is used, the top must be sealed. Any bagging shall not allow leakage nor breakage due to overfilling;~~]

(2) in order to double bag the asbestos-contaminated waste material, the inner bag shall be no more than half full, excess air must be squeezed out while in containment. The top of the inner bag must be twisted closed, folded over and sealed with duct tape. The inner bag must be rinsed off or HEPA vacuummed to remove asbestos contamination and placed inside another bag (or in a fiberboard drum). If an outer bag is used, excess air shall be squeezed out while in containment and the outer bag twisted closed, the top folded over and sealed with duct tape;

(3) the exterior bag or fiberboard drum shall apply warning and generators labels as specified in 40 CFR §61.150(a)(1)(iv)-(v). Fiberboard drums shall require the application of a self-adhesive placard identifying the contents as asbestos-containing material. If a fiberboard drum is used, the top shall be sealed. It is violation of these rules to have a container leak or break due to overfilling. Labeling of ACBM must be done prior to removal from the containment area;

(4) in the event of a bag or fiberboard drum leak, the drum or bag shall be placed into a third bag or wrapped in a minimum of one layer of 6-mil polyethylene plastic and be sealed as stated above in subsections (j)(2) and (j)(3) of this section;

(5) any additional bags or wrapping must be properly identified as being asbestos-contaminated and shall have proper generator labels attached;

(6) labeling of ACBM must be done prior to removal from the containment area;

(7) [(2)-] asbestos-covered [asbestos-covered-] components that are going to be removed from the building may either be stripped in place and cleaned (and pass a visual inspection by the consultant), or the ACBM may be adequately wetted and the entire component wrapped in two layers of six-mil plastic or a single layer of plastic with a tear resistance of no less than M.D. 512 grams, T.D. of 2,068 grams, and a dart impact of no less than 297 grams as measured using American Society for Testing and Materials (ASTM) [ASTM-] methods D1709, D1922, and D882, labeled and sealed, providing that:

(A) components such as sections of metal lath that cannot be safely lowered to the floor shall be stripped in place;

(B) any component that cannot be lowered or handled without presenting an excessive fiber release or safety hazard shall be stripped in place;

(C) sharp edges of components shall be protected to preclude tearing the plastic wrapping and causing injury; and

(8) [(3)-] ACBM shall be removed in small sections and containerized while wet. At no time shall material be allowed to accumulate on the floor or become dry. Structural components and piping shall be adequately wetted prior to wrapping in plastic sheeting for disposal;

(9) [(4)-] proper temporary storage of asbestos-containing [asbestos-containing-] waste material shall be provided (e.g., a roll-off box, dumpster or storage room lined with plastic sheeting). Final disposal of asbestos-containing [asbestos-containing-] waste material shall be within 30 days of project completion or when receiving container is full, whichever is sooner.

(k) Requirements for the encapsulation of ACBM [~~ACM~~].

(1) Prior to encapsulation, loose and hanging ACBM [~~ACM~~] shall be removed.

(2) - (4) (No change.)

(l) Requirements for the enclosure of ACBM [~~ACM~~].

(1) (No change.)

(2) All areas of ACBM [~~ACM~~] shall be wetted if they are to be disturbed during the installation of hangers, brackets, or other portions of the enclosure.

(3) Prior to enclosure, loose and hanging ACBM [~~ACM~~] shall be removed.

(4) (No change.)

(5) Enclosures for ACBM [~~ACM~~] shall be specifically designated by signs, labels, color coding, or some other mechanism to warn individuals who may in the future be required to disturb the material.

(m) Safety requirements. The following safety requirements shall be in effect for an abatement project:

(1) Fire safety. A minimum of [At least-] one fire extinguisher with a minimum National Fire Protection Association rating of 10BC (dry chemical) shall be placed within each abatement project containment for every 3,000 [1,000-] square feet, or fraction thereof, of containment area. Each fire extinguisher shall be maintained in a fully charged and operable condition.

(2) Electrical safety. All electrical service lines entering [Ground-fault circuit interrupter (GFCI) units shall be installed on all electrical circuits used within-] the regulated and containment areas shall be connected through ground-fault circuit interrupter (GFCI) units.

(3) (No change.)

§295.61. Operations: Notifications.

(a) General provision. The Texas Department of Health (department) shall be notified on a form specified by the department of any asbestos abatement activity, renovation or operations and maintenance (O&M) activity affecting asbestos-containing building materials (ACBM) [~~(ACM)~~], or any demolition in facilities or public buildings. Notification shall be made to the department no less than ten working days (not calendar days) prior to commencement of the activity and shall be submitted on the form specified by the department. It is a requirement that the department notification form be filled out completely and properly. Blanks which do not apply shall be marked N/A. The designation of N/A will not be accepted for references requiring identification of the work site, building description, building owner, abatement and transportation companies, individuals required to be identified on the notification form, or [not-] start and completion dates in compliance with 40 [Code of Federal Regulations (CFR) Part-] § 61.145, and this section. National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements apply equally to both the NESHAP and Texas Asbestos Health Protection Act (TAHPA) notification requirements. An original signature is required on each notification form. A copied signature is not acceptable. An [Beginning September 1, 1994, an-] invoice for the required fee for notifications will be sent from the department to the building owner. [The notification shall be improper unless it contains an original signature. A separate notification will no longer be made to Texas Natural Resource Conservation Commission (TNRCC)-.]

(1) - (2) (No change.)

(b) Responsibility for Proper Notification . It is the responsibility of the facility owner and/or operator to notify the department under this section. In a public building, this task may be delegated to the owner's agent such as a licensed asbestos abatement contractor or consultant and must be delegated in writing. [~~The facility owner is responsible for the payment of the required notification fee.~~] In a demolition where a licensed abatement contractor or consultant is [~~are~~] not required, the task may be delegated in writing to the demolition contractor or other agent . The notification must be filed on the form specified by the department. The notification shall have all information completed with no blocks left blank. The facility owner, and the agent [~~person~~] to whom the task of notification has been delegated, are jointly and severally responsible for the accuracy and timeliness of the notification.

(c) - (e) (No change.)

(f) Start-date/stop-date (completion date) requirement. In no event shall asbestos abatement [~~activity~~], demolition, operations and maintenance [~~Operations and Maintenance~~] (O&M), or renovation, as covered by this section, begin or be completed on a date other than the date contained in the written notice except for operation covered under subsection (g) of this section. Amendments to start date changes are to be submitted as required in subsections (d) and (e) of this section. An amendment is required for any stop dates which change by more than one work day for each week (seven calendar day period) for which the project has been scheduled and notification submitted. The building owner, or his/her delegated agent, shall provide schedule changes to the department no less than 24 hours prior to the change or completion of the project. Changes less than 10 days in advance shall be confirmed with the regional office telephonically and followed up in writing to the central office located in Austin, Texas .

(g) - (i) (No change.)

(j) Asbestos notification fees.

(1) (No change.)

(2) Payment. An invoice for the required fee will be sent to the building owner after the notification has been received by the department. Fee amounts, address, and fund numbers are included on the form. Payment must be remitted in the manner instructed on the invoice. The facility owner is responsible for the payment of the required notification fee. The task may be delegated to an agent but the facility owner is solely responsible for timely and sufficient payment.

(3) (No change)

(4) Nonpayment of fees. Failure to pay the required fee after an invoice has been sent shall be considered a violation and may subject the building owner to administrative penalties as listed in §295.70 of this title (relating to Compliance: Administrative Penalty). The building owner and his agent may also be subject to criminal penalties if applicable. Governmental organizations may submit a copy of the interagency transfer document or a statement that a check has been requested and is in processing. Payment must then be received no later than 60 working days following notification.

§295.62.Operations: Record Keeping.

(a) (No change.)

(b) Training providers. Licensed training providers shall comply with the following minimum record-keeping requirements.

(1) - (2) (No change.)

(3) Examinations. A training provider must document that each person who receives an accreditation certificate for an initial training course has achieved a passing score on the written examination in accordance with §295.64(j) of this title (relating to Training: Required Asbestos Training Courses). These records must include a copy of the exam and clearly indicate the date on ~~[upon]~~ which the exam was administered, the training course and discipline for which the exam was given, the name of the person who proctored the exam, and the name , examination answer sheet, and test score of each person taking the exam. All information from the training course and examination, including the [The-] topic and dates of the training course, must correspond to the information [those-] listed on each [that-] person's accreditation certificate. All records required to be maintained under this section shall be available for inspection by the department immediately upon conclusion of the course and administration of the examination.

(4) - (6) (No change.)

(c) Asbestos contractors.

(1) (No change.)

(2) On site. Records and documents shall be maintained on-site at the asbestos project location for the duration of the project. Records and documents with personal references shall be made available to all persons employed at the site upon request. All on-site records and documents shall be made available to the department upon request. The records and documents covered by this paragraph include:

(A) - (L) (No change.)

(M) dates of participation in the operation; ~~[and-]~~

(N) a roster of registered asbestos workers employed ; and ~~[-]~~

~~(O) current copies of the physical exams and respirator fit tests of on-site employees.~~

(d) (No change.)

(e) Consultants. Licensed consultants shall maintain client files pertaining to surveys ~~[inspection-]~~, sampling, assessment, and clearance level monitoring and copies of daily construction logs pertaining to contractor work practices and make such documents available to the department for inspection upon request. Logs for completed projects shall be maintained at the consultant's principal place of business. Logs for current projects shall be kept at the asbestos project work site until final cleanup has been certified.

§295.64.Training: Required Asbestos Training Courses.

(a) General provisions. Persons working with asbestos must be appropriately accredited to perform as a worker, contractor/supervisor, inspector, management planner, or project designer. In a commercial building, only EPA accreditation is required as specified in this section. In a public building, licensing is also required. Applicants for licensing or renewal must submit evidence of fulfillment of specific training requirements acceptable to the Texas Department of Health (department) under these sections. Course content, hours of instruction, refresher training, etc., are subject to change or modification. At the conclusion of each training course, the instructor shall provide the student a copy of the registration form for the state licensing examination and a copy of the examination schedule. The training provider shall also assist the applicant if needed to complete the application to include listing any special requirements of the student, such as an accommodation for a disability covered by the Americans With Disabilities Act.

(1) (No change.)

(2) Each initial and refresher training course offered for accreditation must be specific to a single discipline, and not combined with training for any other discipline. This prohibition against combined training applies to hands-on training sessions. [~~The past practice of combining the worker and supervisor training courses is not allowed as of April 4, 1994.~~]

(3) - (5) (No change.)

(6) A day of training shall consist of eight hours of actual classroom instruction, hands-on practical training sessions, and field trips in any suitable combination, including break periods. A total of 20 minutes in breaks are authorized in each four-hour period of training as determined by the instructor. The one-hour lunch break is not a part of the required eight hours of training. A trainee is not eligible to complete a given course if more than 10% of the session has been missed. The 10% includes being absent from the course at times other than allotted break periods and/or being in the room but not engaged in the course in the judgment of the instructor. No more than eight hours of instruction are authorized within a calendar day.

(7) (No change.)

(b) Asbestos project designer training. The project designer training course shall be at least three days in length. Persons seeking to be licensed as an asbestos consultant or accredited as a project designer under these sections shall complete the approved project design training course as described in this subsection. [(-) For work in public buildings, see also the other training required for asbestos consultants in §295.47(f)(3) of this title (relating to Licensure: Individual Consultant). Successful completion of the course shall be demonstrated by achieving a score of at least 70% correct on the written course examination. The course shall adequately address:

(1) - (20) (No change.)

(c) Contractor/supervisor training. The contractor/supervisor course shall consist of at least five days of training. Persons seeking to be licensed as an asbestos abatement contractor, asbestos abatement supervisor, project manager, or operations and maintenance (O&M) (restricted) contractor/supervisor or accredited as an asbestos abatement contractor or supervisor, shall successfully complete an approved contractor/supervisor training course as described in this subsection. The course may be substituted for the asbestos abatement worker course; this substitution also applies to annual refresher training. This training shall include lectures, demonstrations, audio-visuals and hands-on training, including individual respirator fit testing, course review, and a written examination of 100 multiple-choice questions. Each trainee must score at least 70% correct [~~or better~~] on this written exam to successfully complete the course. The course shall adequately address:

(1) - (16) (No change.)

(d) Asbestos abatement worker training. The worker training course shall consist of at least four days of training. Persons seeking registration or accreditation as asbestos abatement workers shall successfully complete the approved training course, as described in this subsection. Successful completion of the contractor/supervisor training course shall also be acceptable as qualification for asbestos worker applicants. Worker training courses are required to have a classroom student-instructor ratio of not more than 25 to 1 (25:1). The worker training course shall include lectures, demonstrations, hands-on training including individual respirator fit testing, course review, and a written examination consisting of 50 multiple-choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% correct on the written examination. The course shall adequately address:

(1) - (12) (No change.)

(e) Asbestos inspectors. The inspector course shall consist of at least three days of training. Persons seeking to be licensed or accredited as asbestos inspectors shall successfully complete the approved training course as described in this subsection. The inspector training course shall include lectures, demonstrations, hands-on individual respirator fit testing, course review and a written examination consisting of 50 multiple choice

questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% correct on the written examination. The course shall adequately address:

(1) - (6) (No change.)

(7) pre-inspection planning, and review of previous survey [~~inspection~~] records;

(8) - (12) (No change.)

(13) record keeping and writing of the survey [~~inspection~~] report;

(14) (No change.)

(15) field trip , to include a [~~or simulated~~] building walk-through inspection at a suitable location outside of the classroom; and

(16) (No change.)

(f) Management planners. The management planner course shall consist of at least two days of training, and has as a prerequisite, the three-day asbestos inspector course. Persons seeking to be licensed as management planners shall successfully complete the training program for inspectors, as described in subsection (d) of this section, plus the approved asbestos management planner training course, as described in this subsection. The management planner course shall include lectures, demonstration, course review and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% correct on the written examination. The course shall adequately address:

(1) - (12) (No change.)

(g) - (i) (No change.)

(j) Examinations.

[~~(4)~~] Each training provider shall administer a closed book written examination to persons seeking accreditation who have completed an initial training course. Demonstration testing may also be included as part of the written examination. A person seeking initial accreditation in a specific discipline must pass the written examination for that discipline in order to receive accreditation. For example, a person seeking accreditation as an abatement project designer must pass the written examination for an abatement project designer. Training providers shall [~~may~~] develop [~~their own~~] written examinations [~~or use standardized examinations developed for purposes of accreditation under~~] that conform to the following requirements for accreditation under the Toxic Substances Control Act (TSCA) [~~TSCA~~] Title II :[~~Each examination shall adequately cover the topics included in the training course for that discipline.~~]

[~~(2) The following are the requirements for examination in each discipline:~~]

[~~(A) Worker:~~]

[~~(i) 50 multiple choice questions; and~~]

[~~(ii) Passing score: 70% correct.~~]

[~~(B) Contractor/Supervisor:~~]

[~~(i) 100 multiple choice questions; and~~]

~~[(ii) Passing score: 70% correct.]~~

~~[(C) Inspector:]~~

~~[(i) 50 Multiple choice questions; and]~~

~~[(ii) Passing score: 70% correct.]~~

~~[(D) Management Planner:]~~

~~[(i) 50 Multiple choice questions; and]~~

~~[(ii) Passing score: 70% correct.]~~

~~[(E) Project Designer:]~~

~~[(i) 100 multiple choice questions; and]~~

~~[(ii) Passing score: 70% correct.]~~

§295.65.Training: Approval of Training Courses.

(a) - (e) (No change.)

(f) Issuance of certificates. All training certificates shall bear the name, address, and telephone number of the licensed training facility and the name of the instructor. The training provider shall:

(1) - (2) (No change.)

(3) submit the names, social security numbers (or other identifiers if the student does not wish to provide his/her social security number), one-inch [~~one-inch~~] by one-inch [~~one-inch~~] photos, taken during the course, and a group photo of the class taken at the end of the course, of students receiving an accreditation to the department within 10 days of the completion date of each course on a form provided by the department. The group photograph shall include only those individuals who have successfully completed the course and are included on the roster. A photograph containing people who did not successfully complete the course does not meet the requirements of this section. Digital or scanned images will be accepted except for the group photograph. [~~Digital or scanned images will not be accepted.~~] The group photograph must [~~photographs should~~] be no smaller than a standard 3-1/2 inches x 5 inches print; and

(4) provide student with a current one-inch [~~one-inch~~] by one-inch [~~one-inch~~] photo attached to a department application for license/registration. The photograph submitted to the department for licensing purposes must have a white background.

(g) - (h) (No change.)

§295.69.Compliance: Reprimand, Suspension, Revocation ,Probation.

(a) - (b) (No change.)

(c) The department may deny or shall reprimand any licensee or registrant, or shall [~~may~~] modify, suspend , suspend on an emergency basis, refuse to renew, or revoke a license [~~for~~] if the licensee or applicant engages in the behavior listed below. If a license or application has been denied, revoked or suspended for the reasons listed below, the licensee/applicant named in the revocation is not eligible to reapply for licensing for the time periods listed. The licensee or applicant :

(1) has fraudulently or deceptively obtained or attempted to obtain a license or a contract to perform an asbestos-related activity - ineligible to reapply for three years [failure to comply with any provision of the Texas Asbestos Health Protection Act (Act), any rule adopted by the Texas Board of Health, any order issued by the department or a court];

(2) fails at any time to meet the qualifications for a license - ineligible to reapply until qualifications are met [failure to comply with applicable federal or state standards for licensed asbestos activities];

(3) fails to comply with the rules implementing this Act - ineligible to reapply for three years [failure to maintain or falsification of records as required by these sections]; [and]

(4) fails to comply with any applicable federal or state standard for licensed asbestos activities - ineligible to reapply for three years [failure to meet the qualifications for which one holds a license]; [or]

(5) fails to maintain the records required by a federal agency or by the department for the licensed asbestos activities or falsifies such records - ineligible to reapply for one year if license is revoked or suspended for failing to maintain records; - ineligible to reapply for three years if license is revoked or suspended for falsifying records; [fraudulently, by misrepresentation, or deceptively obtaining or attempting to obtain a license or contract for an asbestos related activity.-]

(6) has been convicted within the past five years of a felony or misdemeanor arising from an asbestos-related activity- ineligible to reapply for three years; or

(7) the department has received three valid complaints regarding noncompliance, the department shall revoke the person's license six months. After that time, the person may reapply for a license.

(d) - (f) (No change.)

(g) Probation. The department may place on probation a person whose license or registration is suspended. If a suspension is probated, the department may require the person:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the board; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

§295.70.Compliance: Administrative Penalty.

(a) - (e) (No change.)

(f) Violations shall be placed in one of the following severity levels.

(1) Critical violation. Severity Level III covers violations that are most significant and have a direct negative impact on public health and safety. The base penalty for a Level III violation, first occurrence will not exceed \$10,000 per day, per violation. Examples of Level III violations include, but are not limited to:

(A) (No change.)

(B) permitting disposal of friable asbestos-containing [~~asbestos containing~~] building material (ACBM) [~~(ACM)~~] at uncontrolled sites;

(C) - (H) (No change.)

~~[(1) failure to submit a notification or to pay the required fee.]~~

(2) Serious violation. Severity Level II covers violations that are significant and which, if not corrected, could threaten public health and safety. The base penalty for Level II violations on a first occurrence will not exceed \$1,000 per day, per violation. Examples of Level II violations include, but are not limited to:

(A) - (C) (No change.)

(D) training with a lapsed training provider license. If this results in a suspension, the organization and its principals will not be allowed to be licensed for a period of one year; ~~[and]~~

(E) failure of a licensed person to maintain current training or physical ; and ~~[-]~~

(F) failure to submit a notification or to pay the required fee.

(3) Significant violation. Severity Level I covers violations that are of more than minor significance and, if left uncorrected, could lead to more serious circumstances. This category shall include fraud and misrepresentation. The base penalty for Level I violations on first occurrence will not exceed \$100 per day, per violation. Examples of Level I violations include, but are not limited to:

(A) failure to properly complete the notification form ~~[no soap available in shower facilities]~~;

(B) failure to post required documents listed in §295.58(j) of this title (relating to Operations: General Requirements for Public Buildings) ~~[inadequate storage for clothing in the "clean room"]~~;

(C) - (F) (No change.)

(g) - (h) (No change.)

(i) If the person charged with the violation fails to request a hearing within 30 days following receipt of a notice of violation, ~~[an administrative penalty may be assessed after]~~ the commissioner of health or his/her designee may issue a default order assessing the administrative ~~[has determined that a violation did occur and the amount of the]~~ penalty ~~[is warranted]~~.

§295.71. National Emission Standards for Hazardous Air Pollutants (NESHAP) Compliance.

(a) - (c) (No change.)

(d) Disposal. The department has developed a memorandum of understanding with the Texas Commission on Environmental Quality (TCEQ) (formerly known as the Texas Natural Resource Conservation Commission (TNRCC)) concerning the inspection of solid waste facilities that receive asbestos waste under §295.72 of this title (relating to Memorandum of Understanding Between Texas Commission on Environmental Quality ~~[Natural Resource Conservation Commission]~~ and the Texas Department of Health for the Regulation of Asbestos).

(e) (No change.)

§295.72. Memorandum of Understanding Between the Texas Commission on Environmental Quality (TCEQ) ~~[Natural Resource Conservation Commission]~~ *and the Texas Department of Health for the Regulation of the Asbestos.*

(a) The Texas Department of Health (department) adopts by reference a memorandum of understanding (MOU) with the Texas Commission on Environmental Quality (TCEQ) (formerly known as the Texas Natural Resource Conservation Commission (TNRCC)) . The memorandum contains the agreement of TCEQ ~~[TNRCC]~~ to

inspect asbestos disposal sites under its jurisdiction for conformance with 40 Code of Federal Regulations (CFR), Part 61, Subpart M, §61.154, and to provide copies of inspection and enforcement documentation to the department. This effort will support the department in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR, Part 61, Subpart M.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 25, 2002.

TRD-200207829

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: January 5, 2003

For further information, please call: (512) 458-7236